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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER, and GWENDOLYN M. WELLS,
Appellants,

VS.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN P. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

APPENDIX

RELEVANT DOCKET ENTRIES

1. November 28, 1966. First Amended Petition filed in the Circuit Court of Jackson County, Missouri. (Original petition filed October 15, 1966.)
2. November 22, 1966. Motion of defendant Norman H. Anderson, Attorney General, to Dismiss filed.
3. December 1, 1966. Motion to Dismiss of defendants The Junior College District of Metropolitan Kansas City, et al. filed.
4. January 6, 1967. Final Judgment of Circuit Court, dismissing petition with prejudice.
5. January 13, 1967. Notice of Appeal to the Supreme Court of Missouri, filed by plaintiffs.
6. December 7, 1967. Statement of the case under Missouri Supreme Court Rule 82.13 filed.
7. September 9, 1968. Judgment and opinion of the Supreme Court of Missouri, affirming the judgment of the Circuit Court of Jackson County.
8. September 9, 1968. Dissenting opinion of Judge Seiler filed.
9. September 21, 1968. Appellant's Motion for Rehearing filed.
10. October 14, 1968. Appellant's Motion for Rehearing overruled.
11. November 14, 1968. Notice of Appeal to the United States Supreme Court filed by appellants.
12. January 13, 1969. Appeal docketed.
13. March 3, 1969. Probable Jurisdiction noted.

[Transcript, page 7]

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
DIVISION 3

Case No. 683155

DELLA HADLEY, 7345 Belleview, Kansas City, Missouri; LUCILE S. STARK, 4500 Rockhill Terrace, Kansas City, Missouri; LILLIAN WAGNER, 1015 West 77th Street, Kansas City, Missouri; GWENDOLYN M. WELLS, 4011 Linwood Boulevard, Kansas City, Missouri and ROBERT P. LYONS, 1016 Huntington Road, Kansas City, Missouri,
Plaintiffs,

vs.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, 560 Westport Road, Kansas City, Missouri; JAMES W. STEPHENS, President; WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, 560 Westport Road, Kansas City, Missouri, and HONORABLE NORMAN P. ANDERSON, Attorney General of the State of Missouri, Supreme Court Building, Jefferson City, Missouri,
Defendants.

FIRST AMENDED TAXPAYERS AND VOTERS PETITION FOR DECLARATORY JUDGMENT, TO ENJOIN UNAUTHORIZED EXPENDITURE OF PUBLIC FUNDS AND TO CORRECT MALAPPORTIONMENT OF THE BOARD OF TRUSTEES OF THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI

Come now the plaintiffs and with leave of Court file this their first amended petition:

COUNT I

For their first cause of action against the defendants, plaintiffs state:

1. Plaintiffs, and each of them, are citizens of the United States and of the State of Missouri, are residents and taxpayers of the Kansas City School District and of The Junior College District of Metropolitan Kansas City, Missouri, and are registered and qualified voters in said Districts and entitled to vote for the Board of Trustees of said Junior College District.

2. Plaintiffs Wells and Lyons are also elected and presently acting members of said Board of Trustees.

3. Plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other voters and taxpayers similarly situated in the State of Missouri, the persons constituting said classes of voters and taxpayers being very numerous and plaintiffs being chosen so as to fairly insure adequate representation of all. The issues presented in this action are of common and general interest to all of the taxpayers and voters of the Kansas City School District and affect all of them in exactly the same manner as these plaintiffs are affected. Such other persons are so numer-

ous, amounting to several hundred thousands of individuals that it is impracticable to bring all of them before the Court as individual plaintiffs and therefore plaintiffs sue for themselves and for the benefit of all of the other voters and taxpayers of said school district.

4. The individual defendants, and each of them, are citizens of the United States and of the State of Missouri and reside in said state and are sued in their representative capacities as hereinafter set forth:

(a) Defendants James W. Stephens, William L. Cassell, Reed B. Kenagy, Jr., and Mrs. Y. B. Wasson are members of the Board of Trustees of the Junior College District of Metropolitan Kansas City, Missouri, defendant Stephens being the president thereof, and plaintiffs Gwendolyn M. Wells and Robert P. Lyons being the other members thereof. As such, said defendants are charged with the giving of notice of elections and with various other duties in connection with the conduct of the elections for trustees. As such Trustees, they are also charged with the conducting of the affairs and business of the District. They are sued as representatives of all of the trustees of junior college districts in the state, such persons constituting a class so numerous as to make it impracticable to bring them all before the Court. Said defendants have been fairly chosen so as to fairly insure adequate and fair representation of the whole class. This action involves common questions of law and fact affecting the several rights of all said officials, and common relief is sought against them.

(b) Defendant Linda L. Coulson is the Secretary of said Board of Trustees of the Junior College District of Metropolitan Kansas City, Missouri, and as such

is charged with the statutory duty of receiving the declarations of candidacy of all candidates for the office of trustee and performing other duties with respect to elections of trustees. She is sued as representative of all of the secretaries of boards of trustees of junior college districts, such persons constituting a class so numerous as to make it impracticable to bring them all before the Court. This action involves common questions of law and fact affecting the several rights and duties of all of said secretaries and a common relief is sought against them. Said defendant has been fairly chosen so as to insure adequate and fair representation of the class.

(c) Defendant Norman P. Anderson is the Attorney General of Missouri, and as such it is required that he be served with a copy of the proceeding and be entitled to be heard on Count I hereof, because a state statute is alleged to be unconstitutional.

(d) Defendant, The Junior College District of Metropolitan Kansas City, Missouri, is sued as representative of all of the Junior College districts in the state, the same constituting a class so numerous as to make it impracticable to bring them all before the Court. Said defendant has been fairly chosen so as to insure fair and adequate representation of the whole class. Said district is the second largest such district within the state and the malapportionment of its board and school district representation is characteristic of most of the other districts as shown by Exhibit "A", hereto. The district, its board of trustees and its secretary are therefore truly representative of the nine junior college districts of the state, their fifty four trustees, and nine secretaries, and truly adversary to the interests of plaintiffs herein. The other districts

and their boards of trustees are all located outside the County of Jackson, and in diverse and distant sections of the state and it would be highly impractical and unnecessary to a full, fair and adequate adversary determination of the issues presented to join all of them as defendants herein.

5. Defendant, The Junior College District of Metropolitan Kansas City, Missouri, is a junior college district organized and existing under the laws of the State of Missouri and specifically under the provisions of V.A.M.S., Chapter 178. Under said laws, the board of trustees of said district exercises legislative and administrative functions. Among these are the levying of taxes, preparation of an annual budget, establishing of policies and procedures for the government of the district and otherwise functioning as the legislative and policy making body of the district.

6. Plaintiffs are now denied the equal protection of the laws guaranteed to them by the Fourteenth Amendment to the Constitution of the United States and by Article I, Section 2, of the Missouri Constitution. Plaintiffs bring this action on their own behalf and on behalf of all of the taxpayers and registered and qualified voters of their school district, and on behalf of all taxpayers and voters in Missouri who are similarly situated. Plaintiffs seek a declaration of their rights and a declaration of the validity or invalidity of the statutes of the State which apportion the trustees of the various junior college districts among the school districts contained therein. They further seek such injunctive relief as may be proper to assure them and all other taxpayers and voters of Missouri the free and equal franchise and the equal protection of the laws to which

they are entitled under the Fourteenth Amendment to the Constitution of the United States and the Missouri Constitution and which rights are now being denied them by the defendants and their predecessors in office who have complied with certain unconstitutional sections of the Missouri Statutes, as hereinafter more particularly set forth.

7. Sections 178.820 and 178.840 of the Laws of Missouri, 1963, provide that if there are in the junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the district.

This formula automatically and inherently discriminates against voters in the larger school districts and in favor of voters in the smaller school districts. The latest school enumeration of the Kansas City School District was 123,388 and the total school enumeration of the remaining school districts in said junior college district was 81,571. Accordingly, pursuant to said Sections, three of the present Board of Trustees of the Junior College District of Metro-

politan Kansas City, Missouri, were elected from the Kansas City School District and three of said members were elected from the remainder of the district.

8. Plaintiffs aver that the aforementioned statutory law embodied in Sections 178.820 and 178.840 has resulted and will continue to result in invidious discrimination against the plaintiffs and all other taxpayers and voters of the Kansas City School District and against the voters of many other school districts in the state and will debase the votes of plaintiffs in voting for members of the Board of Trustees of said Junior College District.

9. The right of equal representation guaranteed plaintiffs is that of representation in proportion to population, not school enumeration, and the discrimination against plaintiffs, when measured in terms of the relative populations of the respective districts, is even greater than when measured by school enumeration.

10. Plaintiffs, as citizens of the United States and as citizens and registered and qualified voters of the State of Missouri, possess an inherent right to vote for members of the Board of Trustees of the Junior College District and to cast votes that are equally effective with the votes of every other voter of said district; but plaintiffs aver that by virtue of the invidious discrimination inherent in the provisions of Sections 178.820 and 178.840, the votes of the plaintiffs are not as effective as the votes of voters residing in other school districts in said junior college district. As a result of such invidious discrimination, the voters of the remaining school districts of said junior college district have a vote weighed almost two times the votes of the plaintiffs in the election of trustees of said district. The same or a similar situation exists in many

of the other junior college districts of the state, whereby the voters of the larger school districts are invidiously discriminated against and their votes are grossly overweighted by those of the voters in the smaller school districts within said junior college districts. The relative representation in each of the junior college districts of the state is as set forth in Exhibit "A", attached to and made a part of this petition.

11. Plaintiffs aver that said inequalities result in a distortion of the constitutional system as established, defined and guaranteed by the Fourteenth Amendment to the Constitution of the United States and the Missouri Constitution, and that this distortion prevents the Board of Trustees of the Junior College District of The Metropolitan Kansas City, Missouri, from being a body representative of the people of said district, debases the vote of plaintiffs, and denies to plaintiffs the equal protection of the laws. Plaintiffs further aver that as a result thereof, a minority of the voters of said district now control and will continue to control the Board of Trustees of the Junior College District of Metropolitan Kansas City, Missouri, thereof, contrary to the Constitution of the United States and the Missouri Constitution.

12. Plaintiffs aver that the constitutional requirements aforementioned can only be met by a reallocation of trustees among school districts substantially in proportion to population, or by elections at large in said junior college district and that since detailed population figures are available under the 1960 census, such redistribution may effectively be made. In 1967, there will be elections throughout the state for members of the boards of trustees of the various junior college districts and unless the in-

equities herein complained of are corrected by this court, the plaintiffs and all other voters similarly situated will be denied the equal protection of the laws in said elections. The defendants, unless prevented by this court, will perform their duties in the conduct of such elections in an unconstitutional manner.

13. The legislature in Missouri is vested with the duty under Section 1, Article XI of the Missouri Constitution to provide for public education and pursuant thereto has by statute authorized the formation of junior college districts, as bodies corporate and subdivisions of the state, with power to levy and collect taxes, issue bonds, hold elections, and with broad powers to govern the affairs of the district, for the purpose of carrying out state governmental functions. In the exercise of that duty the legislature has elected to delegate the power to perform such responsibilities through representatively elected trustees selected from school districts within such junior college districts. In so doing it is bound by the state and federal constitutional requirements of representation in close relation to population.

* * *

WHEREFORE, plaintiffs pray:

1. That this court take jurisdiction of this controversy.

2. That the court hear and determine this action and declare the rights of the plaintiffs in the premises to be as follows:

(a) That the present apportionment of the Board of Trustees of the Junior College of Metropolitan Kansas City, Missouri, denies the plaintiffs and other voters of

the district similarly situated, the equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States and Article I of the Constitution of Missouri; and

(b) That Sections 178.820 and 178.840 of the Revised Statutes of Missouri, 1963, as now in force, are unconstitutional and void.

3. That upon final hearing of this action, the court grant to the plaintiffs the following further relief:

(a) That the defendants, and each of them, be permanently restrained and enjoined from initiating further elections; from receiving declarations of candidacy therefor; from conducting and certifying elections; and from taking any and all other steps with respect to the election of members of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, under and pursuant to the provisions of Sections 178.820 and 178.840 of the Revised Statutes of Missouri, 1963;

(b) That defendants, and each of them, be restrained and enjoined from conducting such elections or from taking any steps with respect to the elections of members of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, until such time as said Board of Trustees shall have been reapportioned in accordance with the guarantees of the Fourteenth Amendment of the Constitution of the United States and the Constitution of the State of Missouri;

* * *

(d) That the court retain jurisdiction until such time as there shall be enacted proper and valid legislation providing for election of junior college trustees from districts as nearly equal in population as will guarantee the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and Article I of the Missouri Constitution, and until there shall be trustees elected from such districts; and

(e) That if such enactments shall not be adopted and enacted, within such time as shall be deemed reasonable by the court, that the court either divide and apportion The Junior College District of Metropolitan Kansas City, Missouri, into election districts which will provide substantially equal representation of the people of said district, as is guaranteed them by the Fourteenth Amendment to the Constitution of the United States and the Missouri Constitution, or direct that the elections for such trustees be held on an at large basis.

4. That plaintiffs may have such further and alternative relief as the nature of this action may require and this court may deem proper.

* * *

EXHIBIT "A"

TABLE OF REPRESENTATION ON BOARDS OF ALL MISSOURI JUNIOR COLLEGE DISTRICTS

District	Major School District Enumeration — No. Dir.		Total Enum.	Major School District Percentage Directors — Enum.	
St. Louis-St. Louis Co.	153,656	2	336,277	33-1/3%	45.7%
Jasper Co.	10,224	2	20,954	33-1/3%	49.0%
Three Rivers	6,688	2	18,005	33-1/3%	37.0%
Sedalia	5,248	3	8,141	50%	64.4%
Mo. Western	22,619	4	28,231	66-2/3%	80.0%
K. C. Mo.	112,815	3	177,508	50%	63.6%
Newton-McDonald		(At large)			
Jefferson Co.		(At large)			
Mineral Area		(At large)			

The enumeration figures herein are those supplied by the Missouri Board of Education, as the enumeration upon which were based the allocation to school districts of trustees for each junior district in the state.

[Transcript, page 28]

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

(Title Omitted in Printing)

ORDER OVERRULING PLAINTIFFS' MOTIONS FOR REHEARING OR NEW TRIAL OR IN THE ALTERNATIVE FOR LEAVE TO DISMISS COUNT I WITHOUT PREJUDICE AND FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE

Now on this 6th day of January, 1967, the above cause came on before the Court on the plaintiffs' motions for rehearing or a new trial or in the alternative for leave to dismiss Count I without prejudice, the Court having heretofore on December 2, 1966 sustained defendants' motion to dismiss Count I and Count II of plaintiffs' first amended petition, for failure to state a claim upon which relief can be granted, but having granted plaintiffs leave to further amend said amended petition within 10 days thereof, which time was extended by the Court for an additional 10 days, and the plaintiffs having failed to further amend said amended petition within the time allowed, and plaintiffs having filed the above described motions for rehearing or a new trial or in the alternative for leave to dismiss Count I without prejudice, and all parties hereto being represented by their respective counsel, and the Court having heard the arguments of counsel and having studied the briefs submitted, and being fully advised in the premises, finds that the motions for rehearing or a new trial or in the alternative for leave to dismiss Count I without prejudice should be overruled and that plaintiff's first amended petition and Count I and Count II thereof, fail to state a claim upon which relief can be granted and should therefore be dismissed with prejudice, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiffs' motions for rehearing or a new trial or in the alternative for *relief* to dismiss Count I without prejudice be and they are hereby overruled, and

IT IS FURTHER ORDERED that plaintiff's petition and their cause of action in Count I and Count II thereof be, and they hereby are finally dismissed with prejudice at plaintiffs' costs.

[Transcript, page 34]

IN THE SUPREME COURT OF MISSOURI

(Title Omitted in Printing)

STIPULATION AND STATEMENT OF CASE UNDER SUPREME COURT RULE 82.13

Comes now the appellants and respondents above named and subject to the approval of the court stipulate and agree to the following for the purpose of simplifying the issues and expediting the ultimate disposition of this case. The parties therefore hereby stipulate as follows:

1. The following stipulation is intended to be a statement of the case in compliance with Supreme Court Rule 82.13. The transcript of the record on appeal has been filed herein and this is intended to inform the Court as to such additional matters as may be required under said Rule.
* * *

2. Plaintiffs-Appellants, and each of them, are citizens of the United States and of the State of Missouri, are residents and taxpayers of the Kansas City School District, Kansas City, Missouri, and of The Junior College District of Metropolitan Kansas City, Missouri, and are registered and qualified voters in said districts and entitled to vote for the Board of Trustees of said Junior College District.

3. The individual defendants-respondents, and each of them, are citizens of the United States and of the State of Missouri and are sued in their capacity as members of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, except that individual defendant-respondent Linda L. Coulson is sued in her capacity as secretary of said Junior College District; defendant-respondent The Junior College District of Metropolitan Kansas City, Missouri, is a junior college district organized and existing under the laws of the State of Missouri and specifically under the provisions of R.S.Mo. 178.770 through 178.890; and said District has the powers, functions and duties prescribed by applicable provisions of law including the aforesaid sections, and the parties further stipulate that the rights, powers and duties of the Board of Trustees of junior college districts in the State of Missouri and governed by Section 1, Article IX of the Missouri Constitution, as well as such other sections of the Missouri statutes which are incorporated by reference in said Chapter 178, or such as may specifically relate to the organization and operation of such junior college districts, together with any pertinent Missouri case law relating to the organization, existence, powers and duties of such junior college districts and the board of trustees thereof; defendant-respondent Norman H. Anderson is the Attorney General of the State of Missouri and is joined as a party-defendant herein because a statute of the State of Missouri is alleged in this litigation to be unconstitutional.

4. The Junior College District of Metropolitan Kansas City, Missouri, was organized on June 5, 1964 pursuant to an election, held May 26, 1964. Its geographical boundaries include parts of Jackson, Clay, Cass and Platte counties for a total of 400 square miles. Since its organization, the Junior College District has maintained a junior

college offering junior college (13th and 14th year) courses to all students enrolled therein. The Junior College District of Metropolitan Kansas City, Missouri, comprises school district of Kansas City School District No. 33, Center School District No. 58. Consolidated School District No. 1 (Hickman Mills), Consolidated School District No. 2 (Raytown), Consolidated School District No. 4 (Grandview), Reorganized School District No. 7 (Lee's Summit), North Kansas City School District No. 74, and Belton School District No. 124.

5. The phrase "school enumeration" as used in R.S.Mo. 178.820 means an enumeration of all persons between the ages of 6 and 20 years resident within each component school district (R.S.Mo. 167.011)).

6. Sections 178.820 and 178.840 of the Revised Statutes of Missouri provide that if there are in the junior college district one or more school districts with more than 33-1/3% and not more than 50% of the total school enumeration of the junior college district as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the district. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration of the junior college district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the junior college district. If any school district has more than 66-2/3% of the total school enumeration of the district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the junior college district (Section 178.820 is set out in full as Exhibit "A" hereto).

7. The Kansas City School District No. 33 is a component school district within The Junior College District

of Metropolitan Kansas City, Missouri. Exhibit "B" hereto sets out the enumeration figures for the District for the years from 1963-64 through 1966-67. Exhibit "C" sets out the enumeration figures for all the junior college districts in Missouri, for the years upon which the allocation of trustees to component sub-districts was based.

7a. The facts set out in Exhibit "C" concerning school enumeration in the respective junior college districts in Missouri are true and correct. Respondents contend that only those figures relating to The Junior College District of Metropolitan Kansas City, Missouri, are material and in stipulating to Exhibit "C" it is understood that respondents are not waiving their objections to the materiality or relevancy of said Exhibit.

7b. The facts set forth in Exhibit "B" concerning school enumeration in The Junior College District of Metropolitan Kansas City are true and correct. Appellants contend that only those figures for 1963-64 and 1965-66 are material.

8. At the present time three of the trustees on the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, were elected from said Kansas City School District No. 33 and the other three of said trustees were elected from the remainder of the junior college district.

9. In this action plaintiffs-appellants seek a declaration of their rights and a declaration of the validity or invalidity of the statutes of the State of Missouri which apportion the trustees of The Junior College District of Metropolitan Kansas City, Missouri, among the component school districts comprising said junior college district. (Plaintiffs-appellants' First Amended Petition contains two counts denominated Count I and Count II. Count II, and the matters set forth therein, are not before the Court

on appeal. Therefore, all references to plaintiffs-appellants' First Amended Petition, and the matters set forth therein, relate only to Count I thereof and the matters set forth therein.)

10. In their first amended petition plaintiffs-appellants allege that the statutory formula (as set forth in R.S. Mo. 178.820 and 178.840) for the selection of trustees for said junior college board is unconstitutional and in violation of their rights as United States citizens under the equal protection clause of the Fourteenth Amendment to the United States Constitution in that said formula results in invidious discrimination against plaintiffs-appellants and all other taxpayers and voters of the Kansas City School District and debases the votes of plaintiffs-appellants in voting for members of the Board of Trustees of said junior college district. It is plaintiffs-appellants' position as alleged in their first amended petition that since the school enumeration of the Kansas City School District is greater in number than the total school enumeration of other component school districts in said Junior College District, then the vote of plaintiffs-appellants and all other taxpayers and voters of the Kansas City School District are thereby debased and of less weight than the votes of the taxpayers and voters residing in the other component school districts.

11. Defendants-respondents filed a Motion in the trial court to dismiss plaintiffs-appellants' first amended petition on the ground that it failed to state a claim upon which relief could be granted. It is defendants-respondents' position that the aforesaid Missouri statutes are not unconstitutional and that the formula set forth herein for the selection of trustees for the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri, is not in violation of the equal protection clause of

the Fourteenth Amendment to the United States Constitution.

12. The basis for the ruling of the trial court, sustaining defendants' motion to dismiss plaintiffs' first amended petition was that the statutory formula for the election of trustees of junior college districts as set forth in R.S.Mo. 178.820 and 178.840 is not unconstitutional as being in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution.

13. The questions presented by this appeal arose by virtue of the filing of said first amended petition aforementioned and the order and judgment sustaining the motion to dismiss said first amended petition and the trial court's entering a final judgment of dismissal with prejudice.

14. The question presented by this appeal and the point to be relied upon by the appellants is as follows:

> Are the provisions of R.S.Mo. 178.820 and 178.840, to the extent that they establish a formula for election of trustees within a junior college district (exclusive of the provisions providing for an election of all trustees at large from an entire junior college district), unconsitutional under the equal protection clause of the Fourteenth Amendment to the United States Constitution?

15. This stipulation, transcript and statement under Rule 82.13 of the Supreme Court Rules is submitted for the purpose of presenting this case to the Supreme Court of Missouri in such form that the Supreme Court may determine the constitutional issue involved, and make such other orders as may be proper in the premises.

* * *

EXHIBIT "A"

Section 178.820 of the Laws of Missouri, 1963, provides:

"In the organization election six trustees shall be elected at large, [except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district.] If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each."

EXHIBIT "B"

ENUMERATION FIGURES OF THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI

Component School District	1963-64	1964-65	1965-66	1966-67
#33 Kansas City	112,815	121,292	123,388	123,754
#58 Center	6,215	6,666	6,903	7,431
R-VII Lees Summit	5,475	6,148	6,482	6,875
C-1 Hickman Mills	10,553	13,838	15,175	15,634
C-2 Raytown	16,466	19,992	21,599	21,202
C-4 Grandview	5,117	5,788	6,151	6,496
#74 N. Kansas City (Clay)	18,662	21,103	22,633	23,865
#124 Belton (Cass)	2,205	2,443	2,628	2,749
	177,508	197,270	204,959	208,006
#33 Kansas City	63.55%	61.48%	60.20%	59.49%
Other	36.45%	38.52%	39.80%	40.51%

EXHIBIT "C"

TABLE OF REPRESENTATION ON BOARDS OF ALL MISSOURI JUNIOR COLLEGE DISTRICTS

	Total District	Largest Component School District			
District	Enumeration	Enumeration	Directors	Percentage of Directors	Percentage of Enumeration
St. Louis-St. Louis Co.	336,277	153,656	2	33.3%	45.7%
Jasper Co.	20,454	10,224	2	33.3%	48.8%
Three Rivers	18,005	6,688	2	33.3%	37.0%
Sedalia	8,141	5,248	3	50.0%	64.4%
Mo. Western	28,231	22,619	4	66.7%	80.0%
K. C. Mo.	177,508	112,815	3	50.0%	63.6%
Newton-McDonald			(At large)		
Jefferson Co.			(At large)		
Mineral Area			(At large)		

Enumeration figures herein are those supplied by the Missouri Board of Education, as the enumeration upon which were based the allocation to school districts of trustees for each junior district in the state. (1963/1964 Enumeration Figures.)

[Transcript, page 43]

IN THE SUPREME COURT OF MISSOURI

(Title Omitted in Printing)

(September 9, 1968)

Now at this day, come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered, be in all things affirmed, and stand in full force and effect; and that the said respondents recover against the said appellants costs and charges herein expended and have therefor execution. (Opinion filed.)

Majority Opinion of the Supreme Court of Missouri
In Banc

IN THE

SUPREME COURT OF MISSOURI

IN BANC

DELLA HADLEY, et al.,
Appellants,
vs.
THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, et al.,
Respondents.

No. 52,758

The plaintiffs here challege as unconstitutional the method prescribed by § 178.820, RSMo (Cum. Supp. 1967) for the election of trustees of the Junior College District of Metropolitan Kansas City and, supposedly, of all other existing junior college districts in Missouri. This suit is one for a declaratory judgment and permanent injunctions. Plaintiffs are five citizens and taxpayers of the defendant district and of the Kansas City School District; two of them are members of the Board of Trustees of the defendant district. The defendants are the district, its other four members, its Secretary, and the Attorney General of Missouri. Plaintiffs assert: that they fairly represent, as a class, all persons similarly situated in the State of Missouri (including those in other junior college districts) "being chosen so as to fairly insure adequate representation of all;" that the questions raised are of common and general interest to all taxpayers and voters of the Kansas City School

District; that the interested persons are too numerous to join; and that the defendants here are representative of all junior college districts in the state, their trustees, and their secretaries. There are eleven junior college districts in Missouri. We recognize plaintiffs as fairly representative of the citizens and taxpayers of the Kansas City School District, but no facts whatever are alleged to justify the conclusion that they fairly represent the citizens and taxpayers of any other junior college district or any part thereof; nor are defendants shown by factual allegations to be representative of the other districts and their officers. Civil Rules 52.09, 52.08. No other plaintiffs or defendants have entered an appearance. We recognize the action as a proper class suit on behalf of the citizens of the Kansas City School District against the named defendants only. Perhaps the resulting distinction is, in this case, more academic than real, but the allegations and claims are too broad.

Section 178.820, about which these issues revolve, is as follows:

"1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the pro-

posed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

"2. Candidates for the office of trustee shall be citizens of the United States, at least thirty years of age who have been resident taxpayers of the proposed district for at least one whole year preceding the election and if trustees are elected other than at large they shall be resident taxpayers of those election districts for at least one whole year next preceding the election. All candidates for the first board of a district shall file their declarations of candidacy with the state board of education at least thirty days prior to the date of the organization election."

Plaintiffs seek to apply strictly the "one man, one vote" principle to the election of all trustees of the defendant district (which we shall refer to as the "district"). That district is composed of eight school districts, and includes parts of Jackson, Clay, Cass and Platte Counties,

for a total area of about 400 square miles. Since we are dealing only with the pleadings and a stipulation, we are limited in the facts which we may consider. Plaintiffs have, in their brief, gone somewhat outside the allegations of their first amended petition. A "Stipulation and Statement of Case" filed here under our Rule 82.13 adds little more; it eliminates one pleaded issue, states that the defendant district was organized on June 5, 1964, under Chapter 178, and that it has since maintained a junior college, offering 13th and 14th year courses; it lists in an exhibit the respective enumeration figures. Much of the statement of the case consists of a recital of the controversial legal contentions. It is stated that the latest "school enumeration" of the Kansas City School District was 123,754 and that the total school enumeration of the remaining seven school districts in the defendant district was 84,252. Thus, the enumeration of the Kansas City District is 59.49% of the total. It is also alleged that three trustees were elected from the Kansas City District and three from the remainder of the defendant district. Further allegations of the petition are, in substance: that the trustees exercise legislative and administrative functions, including "the levying of taxes, preparation of an annual budget, establishing of policies and procedures for the government of the district and otherwise functioning as the legislative and policy making body of the district;" that plaintiffs are denied the equal protection guaranteed by the 14th Amendment to the United States Constitution and by Article I, § 2 of the Missouri Constitution, by virtue of the dilution of their votes under the formula of § 178.820, and that this constitutes an invidious discrimination against them and against the other taxpayers and voters of the Kansas City School District; that their representation should be determined by population, and not

by school enumeration; that the votes of those voters in the other school districts are weighted "almost two times;" that defendant district is not a body representative of the people of the district, and that plaintiffs' votes have been "debased." Plaintiffs pray a declaration that those parts of § 178.820 providing the formula for electing trustees and § 178.840 (which provides more specifically for the details of elections), are unconstitutional and that broad injunctions shall issue, essentially stopping further elections until a proper reapportionment is made, either by legislation or by the court.

Motions to dismiss were filed, one by defendant Anderson separately, and one by the other defendants jointly. These challenged the validity of this suit as a proper class action against other junior college districts, and alleged that the petition failed to state a claim upon which relief could be granted. On December 2, 1966, the court entered an order sustaining both motions to dismiss but allowed plaintiffs 10 days to plead further; plaintiffs then filed a "Motion for Rehearing or New Trial" which was overruled. They filed no further amendment. The court thereupon denied leave to plaintiffs to dismiss Count I (the only part involved here) without prejudice, noted that plaintiffs had failed to plead further, and entered final judgment dismissing plaintiffs' petition and cause of action with prejudice. Appeal was duly taken.

While we are furnished with rather meager facts, it does appear that the defendant district was organized under Chapter 178, and that the Kansas City School District has, under the statutory formula, elected three of the six trustees. The record further shows, as already indicated, that the Kansas City School District contains 59.49% of the "school enumeration." That term is described in § 167.011 as a yearly (required) enumeration

of all persons in a school district between the ages of six and twenty, resident within the district. The stipulation shows the enumerations of the seven separate school districts other than the Kansas City District; these vary from 2749 to 23,865.

The issue is simply whether our statutory formula contained in § 178.820 is a violation of the equal protection provided by the federal and state constitutions. Plaintiffs argue that their votes are diluted to the extent that the voters in other districts (40.51%) elect one half of the trustees while their own district (59.49%) elects only the other half.

We shall spend no time in reviewing those cases which hold that the districts as apportioned for the election of members of state legislatures must be fixed on a one man, one vote principle, with substantial equality for the votes of all. Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506; Lucas v. General Assembly of Colo., 377 U.S. 713, 12 L.Ed.2d 568. The principle has also been applied to state-wide primary elections. Gray v. Sanders, 372 U.S. 368, 9 L.Ed.2d 821, and to the apportionment of congressional districts. Wesberry v. Sanders, 376 U.S. 1, 11 L.Ed.2d 481. We pass those cases for a discussion of others which come closer to our problem.

In Avery v. Midland County, 390 U.S. 474, 20 L.Ed.2d 45, 88 S.Ct. 1114 (April 1, 1968), the court held that this requirement was applicable to the election of the members of a County Commissioners Court in Texas. Four members were elected from districts (one by each) and one at large. One district had a population of 67,906; the others 852, 414 and 828. The disproportion was thus enormous. The County Commissioners were found to have these powers: to appoint various officials, let contracts, build roads and bridges, administer welfare funds, supervise and

regulate elections, fix the county tax rates, adopt the budget, operate all county institutions, fix the boundaries of school districts, fix the boundaries of its own electoral districts, act as a board of equalization on all county tax assessments, and issue county bonds. The court also had authority to construct and operate an airport and libraries and to control public housing. The Texas Supreme Court held that the existing districts were improperly created, but that other elements besides population could be considered. The opinion of the United States Supreme Court seems to have recognized clearly that this body was the *"general governing body"* of the county, and it quoted from a commentary on the Texas Statutes to that effect. The court stated that the Commissioners Court had both legislative and administrative functions, but that it could hardly be classified according to "civics texts;" that, however, it was representative of "most of the general governing bodies of American cities, counties, towns and villages." Many facets of its powers and duties were recited to corroborate this conclusion. Specifically, the court held, at 20 L.Ed.2d l.c. 53, and we quote: "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body." It would, of course, be futile to discuss the three dissenting opinions.

We next discuss the case of Sailors v. Board of Education, 387 U.S. 105, 18 L.Ed.2d 650; however, we shall begin with the decision of the Three Judge District Court shown at 254 F. Supp. 17, 28. There the members of a 5-member County Board of Education were elected by delegates (one) from each of 39 local school districts in the county. The County Board had the power to transfer local districts (or parts of districts) or essentially to annex and de-annex: it appointed the county superintendent; it

levied school taxes, made and adopted the budget, conducted the school census, acted as consultant to the various districts, and conducted special education programs. There were 39 local districts; one of these contained 55.6% of the total county population. The greatest population disparity between districts was approximately 200-1, but each local district elected one delegate to the assembly which, in turn, elected the county board. The majority of the District Court held: that the courts are not required to review the apportionment of every "board and agency of the several states, cities, villages, counties, parishes, townships, metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation;" that the proper apportionment of such bodies should be left to the action of the legislatures, which are now required to be properly apportioned themselves.

The opinion of the Supreme Court on appeal is shown at 387 U.S. 105, 18 L.Ed.2d 650. The court noted that the members of the local school boards were elected by the people (concerning which no question was raised) and that these boards, as stated, elected one delegate each to an assembly which elected the county board. As we have already noted, the local districts varied immensely in population (and in the school census). The court reiterated its previous view (Sims, supra) that local political subdivisions and boards are created as convenient agencies to assist in carrying out such of the state functions as may be entrusted to them, and that the extent of their respective powers is a matter resting in the absolute discretion of the state. It further held: that this method of choosing the members of the county board, which it specifically described as of "non-legislative character," was not offensive to constitutional requirements, and that much in

government consists of the "science of experiment" and the exercise of a sound discretion; also, that the county board performed "essentially administrative functions," which were not legislative "in the classical sense." While the court certainly considered the method by which the board was selected, the opinion seems, in our view, to be largely founded upon its ruling that the functions of the board were "essentially administrative" and not legislative. We shall refer again to this feature later, as applied to the present case.

The above cases are the only ones of the Supreme Court which really seem at all applicable here. Plaintiffs cite and discuss federal and state cases which apply the requirement of equal protection on the one man, one vote theory to city governing bodies. Ellis v. Mayor and City Council of Baltimore, CA 4, 352 F.2d 123; Davis v. Dusch, CA 4, 361 F.2d 495; Thayer v. Garraghan, 279 N.Y.S.2d 441; Seaman v. Fedourich, 16 N.Y.2d 94, 209 N.E.2d 778; and our own case of Armentrout et al. v. Schooler et al., Mo., 409 S.W.2d 138. We are not concerned here with these cases for they concern only "local legislative bodies exercising general governmental powers at the municipal level" (Seaman, supra). Counsel also cite cases dealing similarly with elections of County or Town Boards of Supervisors. Bianchi et al. v. Griffing, D.C.N.Y., 238 F. Supp. 997; Dyer v. Rich, D.C.Miss., 259 F. Supp. 741; Bailey v. Jones et al., 81 S.D. 617, 139 N.W.2d 385; State ex rel. Sonneborn v. Sylvester, 26 Wis.2d 43, 132 N.W.2d 249; Lodico v. Board of Supervisors, D.C.N.Y., 256 F. Supp. 442; Martinolich v. Dean, D.C.Miss., 256 F. Supp. 612. These cases were all decided on the theory declared in Avery, namely, that the board, court or body involved was one *exercising general governmental functions.* The present case is distinguishable upon its facts, even if we were otherwise bound by such decisions. Counsel have also cited four

cases which supposedly apply the rule to school board election. They are: Strickland v. Burns, D.C.Tenn., 256 F. Supp. 824; Meyer v. Campbell, Iowa, 152 N.W.2d 617, De Lozier et al. v. Tyrone Area School Board, D.C.Pa., 247 F. Supp. 30; Pitts v. Kunsman, D.C.Pa., 251 F. Supp. 962. In the first place, we are not bound by any of these decisions; in addition, we are not impressed with the logic employed. In Strickland, the majority of the court apparently made no effort to distinguish between school districts and local bodies having general governmental powers and functions, but applied the same broad brush to all; a county school board was involved. In Meyer a county board was again involved; the element of population had been totally disregarded and the districts were specifically based on geographical area or size; moreover, the court there, in our view, misconstrued the opinion in Sailors by considering that it constituted authority for a requirement that in all elections of members of a local public body (if the positions are not appointive) there must be an equal apportionment on a population basis, regardless of the nature and extent of the functions and powers of the body. De Lozier again failed to distinguish between the functions of school boards and bodies with general governmental powers. Pitts, supra, merely held that the attempted mode of election ignored a state statute of Pennsylvania. And see 363 F.2d 841, where the order was stayed in part by the Court of Appeals. All of these four cases, except Meyer, were decided before the decision in Sailors.

A school district, unlike a municipal corporation (city or county) is an instrumentality of the state created for one single purpose and with one single function,—education. State ex rel. School Dist. v. Gordon, 231 Mo. 547, 133 S.W. 44; Community Fire Protec. Dist. v. Board of Education, Mo., 315 S.W.2d 873. It is truly a special purpose unit of government. In an article by Prof. Jack B. Wein-

stein in 65 Columbia Law Review 21 (1965), there appears a thorough discussion of the reapportionment decisions as they affect counties and other forms of municipal government. The article was cited in a note to the dissenting opinion of Mr. Justice Harlan in Avery v. Midland County, 20 L.Ed.2d at loc. cit. 58. The author's conclusion is that it is doubtful if the one man, one vote principle should be applied to *special purpose* units of local government which have limited purposes and functions, and that the legislatures should have much freedom in creating such units, whether elective or appointive.

The defendant district may only levy taxes to the extent specifically prescribed by statute, except by a vote of the people; it may not incur indebtedness and issue bonds except by a vote of the people. It provides buildings, hires teachers and employees generally, makes rules and regulations for governing the students, and administers the business of the 2-year junior college; it may, when necessary, acquire property by condemnation as most other public bodies may do, including levee districts, fire protection districts and drainage districts. The State Board of Education has supervisory control over the defendant district and all other junior college districts, § 178.780. That Board establishes the "role" of all junior colleges, administers the "state financial support program," formulates uniform policies on "budgeting, record keeping and student accounting," establishes entrance requirements and "uniform curricular offerings," is responsible for all "accreditation," and it is required to "supervise the junior college districts." A junior college district, under our plan, has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers.

In this situation we are not bound by any precedent. We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is *not* a "unit of local government having general governmental powers over the entire geographic area served by the body." Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54. In Sailors the court said, 387 U.S. loc. cit. 110: "We do not have that question here, as the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense." It appears to us that the non-legislative character of the board in Sailors was the determining factor. In the present case the legislature and *the people* have retained all essential legislative powers. It would certainly seem that the true nature and character of a board's powers would furnish a more substantive test than would the procedure used in its selection, even where some form of election is involved.

We thus hold that the one man, one vote principle does not properly apply to such a body as the defendant district; we further hold that §§ 178.820 and 178.840 are valid both under the 14th Amendment to the United States Constitution and under § 2 of Art. I of the Missouri Constitution. In this view it is immaterial whether the trustees are elected on the basis of population or "school enumeration." We may note here, however, that the yearly school enumeration does, in all probability, furnish a more accurate guide than does an outdated federal census. We also note, though the matter is not decisive here, the elasticity allowed in § 178.820 to the larger local districts in the elec-

tion of trustees. The Kansas City District with 59.49% of the school enumeration elects three trustees; if the enumeration exceeds 66-2/3% it will elect four. This method is a far cry from the malapportionments shown in the decided cases.

If, as indicated in Sailors, the states should be allowed to "experiment" in their political and governmental processes (387 U.S. loc. cit. 109), and if much is to be left to the discretion of the states (Sailors, again), we fail to see how the method provided here by the Missouri legislature may be deemed invalid. The judgment dismissing the first amended petition and the cause with prejudice is affirmed.

Henry I. Eager, Judge.

All concur except Seiler, J., who dissents in separate dissenting opinion filed.

Dissenting Opinion in the Supreme Court of Missouri

I respectfully dissent and adopt as my dissent the opinion prepared by Judge Houser, Commissioner in Division One. His opinion (without setting it out in quotation marks and after removal of those portions which would repeat the facts set forth in the majority opinion) reads as follows:

The junior college district is a body corporate and a subdivision of the state, organized under and possessing the powers, functions and duties as prescribed in §§ 178.770 through 178.890, V.A.M.S. The district was organized June 5, 1964 pursuant to an election held May 26, 1964. Its boundaries include parts of Jackson, Clay, Cass and Platte Counties for a total of 400 square miles. The junior college

district comprises Kansas City School District No. 33, Center School District No. 58, and six other school districts (Hickman Mills, Raytown, Grandview, Lee's Summit, Belton and North Kansas City). Here are the enumeration figures for the junior college district for the years shown:

Component School District	1963-64	1964-65	1965-66	1966-67
#33 Kansas City	112,815	121,292	123,388	123,754
#58 Center	6,215	6,666	6,903	7,431
R-VII Lee's Summit	5,475	6,148	6,482	6,875
C-1 Hickman Mills	10,553	13,838	15,175	15,634
C-2 Raytown	16,466	19,992	21,599	21,202
C-4 Grandview	5,117	5,788	6,151	6,496
#74 N. Kansas City (Clay)	18,662	21,103	22,633	23,865
#124 Belton (Cass)	2,205	2,443	2,628	2,749
	177,508	197,270	204,959	208,006
#33 Kansas City	63.55%	61.48%	60.20%	59.49%
Other	36.45%	38.52%	39.80%	40.51%

The enumeration figures for all of the junior college districts in the state, showing representation of boards of all junior college districts follow:

	Total District	Largest Component School District			
District	Enumeration	Enumeration	Directors	Percentage of Directors	Percentage of Enumeration
St. Louis-St. Louis Co.	336,277	153,656	2	33.3%	45.7%
Jasper Co.	20,954	10,224	2	33.3%	48.8%
Three Rivers	18,005	6,688	2	33.3%	37.0%
Sedalia	8,141	5,248	3	50.0%	64.4%
Mo. Western	28,231	22,619	4	66.7%	80.0%
K. C. Mo.	177,508	112,815	3	50.0%	63.6%
Newton-McDonald			(At large)		
Jefferson Co.			(At large)		
Mineral Area			(At large)		

At the present time three of the trustees on the board of defendant junior college district were elected from Kansas City School District No. 33. The other three trustees were elected from the remainder of the junior college district.

In Armentrout v. Schooler, Mo. Sup., 409 S.W.2d 138, we extended to seats on a city council the principle that seats in the legislative branch of the state government must be apportioned substantially on the basis of population. In applying the principles of Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L.Ed.2d 506; Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L.Ed.2d 821, and Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526, 11 L.Ed.2d 481, et al., to that local organ of government we considered that the Fourteenth Amendment to the federal constitution applies not only to the state but also to every creature of the state to which the latter has delegated powers of government, and reasoned that an elected city council, primarily a legislative body to which broad legislative powers and governmental functions of a general nature have been delegated as an agency, arm or instrumentality of the state, must as a matter of logic be governed in its composition by the same principles applicable to its creator; and that therefore voters selecting representatives to sit on a municipal legislative body are entitled to the same equal protection and rights in casting such votes as those enjoyed by voters on the state level voting on candidates for the offices of representative and senator in state and national legislative bodies.

Now we are called upon to determine whether as a matter of constitutional right this same principle must be further extended and applied to seats on the board of trustees of a junior college district, which is not primarily

a legislative body exercising general governmental functions.[1]

As pointed out in Armentrout, the Equal Protection of the Laws Clause of the Fourteenth Amendment applies to the State of Missouri and to every governmental creature of the state to which it has delegated the powers of government. "The State of Missouri may exercise its legislative powers only through a legislative body apportioned on a population basis, and it logically follows that the agency, arm or instrumentality to which the state delegates some of its powers should be governed by the same principle. Seaman v. Fedourich, [16 N.Y.2d 94, 262 N.Y.S.2d 444, l.c. 449, 209 N.E.2d 778, l.c. 782 [4]]; Brouwer v. Bronkema, No. 1855, Cir. Ct. Kent County, Michigan, September 11, 1964." Armentrout v. Schooler, supra, 409 S.W.2d, l.c. 143. The Wisconsin Supreme Court

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1. A junior college district has the power to sue and be sued, to levy and collect taxes within the limitations of §§ 178.770-178.890, V.A.M.S., to issue bonds and exercise the same corporate powers as common and six-director school districts, other than urban districts, except as otherwise provided by law, § 178.770; to provide instruction, classes, school or schools, determine per capita cost of college courses, collect approved nonresident tuition fees and charges to resident pupils, § 178.850; to conduct hearings and suspend or expel pupils on disciplinary charges, § 167.161; to make rules and regulations for the organization, grading and government of the district, § 171.011; to let contracts, employ and dismiss teachers and approve bills, § 178.830; to appoint employees and define and assign their powers and duties and fix their compensation, § 178.860; to pass on annexation of school districts to the junior college district, § 162.441, and to acquire real property by condemnation, § 177.041.

expressed the same thought in this language: "Since the composition of the legislature must conform to the principle of equal representation, it is logical that the arm or political subdivision of such legislature enacting legislation should be governed by the same principle of equal representation." State ex rel. Sonneborn v. Sylvester, 26 Wis.2d 43, 132 N.W.2d 249, 256. See also Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401, 3 L.Ed.2d 5. Sections 2 and 25 of Article I, Constitution of Missouri, 1945, also apply to the State and to those of its agencies, arms and instrumentalities to which the State has delegated powers of government.

School districts, including junior college districts, "* * * are public corporations, form an integral part of the state, and constitute that arm or instrumentality thereof discharging the constitutionally intrusted governmental function of imparting knowledge and intelligence to the youth of the state that the rights and liberties of the people be preserved." School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 S.W.2d 909, 910. A junior college district is a creature, a subdivision of the state. § 178.770, V.A.M.S. Its board of trustees exercises the powers delegated to it by the General Assembly. While these powers are primarily administrative in nature, limited by law and relate to the special purpose of education, they include legislative powers of vital importance to the state materially and substantially affecting the lives, property and welfare of the citizenry. The General Assembly could have provided for the exercise of these powers by officials chosen by appointment, or by a combination of the appointive and elective methods of selection, but it did not do so. The General Assembly provided that the officials in whose hands these powers of government are entrusted shall be chosen by a vote of the people. The trustees rep-

resent the people of the district and reflect their views. Having been given the right to select their representatives to sit on junior college district boards, the people are entitled to the same protection in the exercise of their suffrage as that enjoyed by voters on the state level voting for their senators and representatives, or voters on the municipal level voting for their city councilmen, without dilution or diminution of the weight of their individual votes because of the mere fact that they happen to reside in a certain school district.

This logical conclusion has the support of substantial and respected authority. The difference between this case and Reynolds v. Sims, supra, is one of degree and not of principle. In addition to the cases and legal scholars upon which we relied in Armentrout, supra, 409 S.W.2d, l.c. 142, 143, several jurisdictions have reached the same result in cases involving the election of school officials.

In Meyer v. Campbell, Iowa Sup. (1967), 152 N.W.2d 617, it was held that county boards of education, selected by popular vote, are direct representatives of the people and that the state and federal constitutions require their election on an equal representation basis. After analyzing Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L.Ed.2d 663, Gray v. Sanders, Wesberry v. Sanders, and Reynolds v. Sims, supra, the Iowa Supreme Court considered that "* * * there is nothing in these cases that indicates that the fundamental principle that all men are created equal, and thus accorded an equal vote, should not apply similarly to other inferior bodies that possess legislative power, when the method of their selection is by the elective process. Hanlon v. Towey, 274 Minn. 187, 142 N.W.2d 741 (1966), and citations; State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 132 N.W.2d 249. Since it is a basic principle of representative government that the weight of a person's

vote does not depend on geographical boundaries, it follows logically that any inferior *elective* body, that is representative of the people, be representative of all the people equally. Seaman v. Fedourich, 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778; Armentrout v. Schooler (Mo.), 409 S.W.2d 138 (1966); Bianchi v. Griffing, [D.C., 238 F. Supp. 997]. * * * Since our own legislature chose to make members of the board elective rather than appointive, it intended that these members represent the people and not geographical land areas. Each voter similarly situated is entitled to equal representation." 152 N.W.2d, l.c. 621. After determining that the primary functions of county boards of education were administrative the court concluded that substantial legislative functions were delegated to them "sufficient to require member selection under the one man-one vote principle announced in Reynolds v. Sims, * * * when the legislature also provided that the member be chosen by election." Ibid, l.c. 622 [8].

In Strickland v. Burns, M.D. Tenn. (1966), 256 F. Supp. 824, it was held that a Tennessee statute providing that the School Commission be composed of 11 members, one commissioner to be elected from each of 11 school zones (which were unequally populated), violated the Fourteenth Amendment. The court stated that "The plaintiffs herein have established that their individual votes in electing members of the Rutherford County School Commission have been substantially diluted by the provisions of the Act complained of. They have established that the only basis for such dilution is their place of residence. No showing has been made by defendants that would justify the discrimination.

"We hold, therefore, that the discrimination existing is invidious. Since we can find no basis for applying the 'one man, one vote' rule to the congeries of powers possessed

by the Legislature itself and at the same time denying its application to a subordinate body simply because it possesses a fractional part of those powers, so long at least as the fractional part cannot be said to be insignificant or unimportant, we must also hold that the apportionment provisions of the Act complained of are void as violative of rights secured by the Equal Protection Clause of the Fourteenth Amendment." 256 F. Supp., l.c. 827.

In Delozier v. Tyrone Area School Board, W.D. Penn. (1965), 247 F. Supp. 30, it was held that the directors of the board of a consolidated school district, elected by popular vote, are subject to the principle of equal representation laid down in Reynolds v. Sims, supra; that a local school district, being the arm or agency of the state to administer its educational system, is not immune from the constitutional requirement. Noting that the principle had been applied to various elective bodies, local, municipal, county and school districts, "where that body is elective and exercises legislative power," and citing State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 132 N.W.2d 249; Ellis v. City Council of Baltimore, D.C. Md. (1964), 234 F. Supp. 945; Brouwer v. Bronkema, Circ. Ct. Kent Co. Mich. (1964); Bianchi v. Griffing, E.D. N.Y. (1963-1965), 217 F. Supp. 166, 238 F. Supp. 997; and Damon v. Lauderdale County Election Commissioners, (Civil Action 1197-E) U.S.D.C., S.D. Miss. (1964), in support of its ruling, the court struck down the plan before the court as violative of the Equal Protection of the Laws Clause of the Fourteenth Amendment, wherein one representative would represent several times the voting power of another representative.

Pitts v. Kunsman, E.D. Penn. (1966), 251 F. Supp. 962, a case involving an administrative unit in a school system, recognized the principle that when representatives are

elected from individual districts each district under the Fourteenth Amendment, "must then have relatively the same population so as to obtain as nearly as possible equal weight for the franchise of each citizen. [Citing Reynolds v. Sims, Gray v. Sanders, Baker v. Carr, and Delozier v. Tyrone Area School Board.]"

Respondents deny the applicability or pertinence of these decisions, claiming that they either do not make or do not give proper consideration to the distinction between local government units exercising broad, general governmental functions through bodies whose functions are primarily legislative in nature, and local government units essentially administrative in character, organized for a special limited purpose, and they point out that we carefully made that distinction in Armentrout. The argument is that these special purpose bodies "exercise far fewer powers than do general purpose units of government and, therefore, their governing officials, even though they may be elected, are more concerned with administering the special purpose for which such governmental units exist than they are with representing and advocating the interests of their constituents"; that the functions of a junior college district are limited and circumscribed; that the state board of education has supervisory control over such districts; that the duties of the trustees are essentially administrative and "not legislative in the classical sense"; that the trustees are elected "not to serve constituencies and advocate their interests in enacting legislation and laws which will be applicable to all persons who live in the district, but to serve as administrators of the district for the limited purpose of providing a two-year college education." Granting that all of this is true, it does not militate against nor render inapplicable the principle of equal representation. The board of trustees of a junior college district is a representative body. The right in

question is the elector's right to an equal vote in the election of members of a representative body, to which has been delegated a number of legislative powers of vital importance to the State which materially and substantially affect the people of the district.[1] The fact that some or most of the functions of the trustees are administrative in nature and that the district is subject to supervisory control by the state board of education does not permit the abridgment of the rights of the electors to equality in casting their votes for members of the board.

The same argument was made as to a county board of supervisors and answered as follows in State ex rel. Sonneborn v. Sylvester, supra, 132 N.W.2d, l.c. 256: "The fact the county also performs administrative functions and is somewhat responsive or subject to the legislature does not justify the denial of the application of the equal-representation principle to county boards. Solely administrative duties would not call forth the application of the principle, nor do these administrative duties or the limited legislative powers destroy the fact that realistically the county today is a unit of government with vital powers over the lives of its residents. Those powers, which it may now exercise or may be given as a legislative body, require in our form of government the principle of equal representation be applied." In Meyer v. Campbell, supra, the Supreme Court of Iowa, adverting to Gray v. Sanders and Reynolds v. Sims, said, 152 N.W.2d, l.c. 624: "It now seems to us the principles which gave rise to those decisions must be applied to our present method of selection of members of the county board of education. Where the election of those members is required, and where as here the legislature provides for the election of these representatives of the people whether their function be considered legislative, quasi-legislative, or primarily administrative, their election must be made on a population basis, not upon area."

The fact that the governmental unit involved is on the local level and is smaller in size and scope than a governmental body operating on the state level does not make the trustees any less representative of the views of the citizens. As said by Judge Johnson in his dissenting opinion in a case involving county boards of revenue, "To the contrary, rather than limit the principles of *Reynolds*, as the majority opinion does, it would seem that these principles might well have their most meaningful application at the local level." Moody v. Flowers, M.D. Ala. (1966), 256 F. Supp. 195, 201.

Respondents further urge that if the principle of representation were to be applied to all local administrative units throughout the United States, such as fire, sewer, water, drainage, and metropolitan districts, and port authorities, "an extremely chaotic situation would be created thereby." By this decision we are not determining that every unit of local government must be organized on this principle. We are holding that the principle of representation applies to the members of the board of trustees of a junior college district to whom are delegated a substantial number of material and important legislative powers, where the board is elected by the vote of the people. Further extension of this principle must be made, if at all, on a case-by-case basis, depending upon the facts in each case. The granting or withholding of constitutional rights, however, cannot ever be made to depend upon the time, trouble or inconvenience involved, or whether "chaotic" changes upsetting traditional thought patterns will ensue.

After the argument of this case in division but before its submission en banc the United States Supreme Court handed down Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 229, 20 L.Ed.2d 45 extending the principle of representation to the selection of the Midland County,

Texas Commissioners Court, which, although the general governing body of the county, has only limited powers. It was stated as beyond question that a state's political subdivisions must comply with the Fourteenth Amendment. The court broadly held that the Fourteenth Amendment forbids the election of local government officials from districts of disparate size; that "when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, *school board,* or county governing board are elected from districts of substantially unequal population." (Our italics.) The court turned aside the legislative-administrative argument, demonstrating that while the county commissioners court's legislative powers are negligible, apparently concentrated on the subject of rural roads, the court does have power to make many decisions having a broad range of impacts on the citizenry generally. While not denying the right of the states to devise mechanisms of local government with varying populations in residential districts, as where the governing body's functions are essentially administrative in nature or where the scheme is one of at-large voting, the court insisted upon the "requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." This latest expression of the United States Supreme Court on the subject is strong and compelling authority in support of the conclusion we have reached.

Respondents' reliance upon Sailors v. Board of Education, W.D. Mich. (1966), 254 F. Supp. 17, aff. 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650, is misplaced. The issue was not framed in that case. In Michigan the five-member county board of education is chosen not by the electors of the county but by delegates from the local school boards. The qualified school electors elect the local boards. A majority of the three-judge federal district court panel held that the rule of equal representation was inapplicable and dismissed the complaint. The United States Supreme Court affirmed, but gave no definitive answer to the question now before us. Justice Douglas pointed out that the Michigan system for selecting members of the county school board is basically appointive rather than elective, stating, "If we assume *arguendo* that where a State provides for an election of a local official or agency—whether administrative, legislative, or judicial—the requirements of Gray v. Sanders and Reynolds v. Sims must be met, no question of that character is presented. * * * Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man-one vote' has no relevancy."

The Attorney General argues that the government and control of a junior college district resides in and is exercised by the voters and the legislature; that "[t]he representative body which holds the key governmental powers in junior college districts is the state legislature. If the appellants desire changes to be made in these powers and there [sic] exercise, the appropriate place of redress is the state legislature." We do not agree. The government and control of a junior college district resides in and is exercised by the board of trustees, under the limitations and controls provided by law. The board of trustees is

the representative body which holds the "key governmental powers." Under the equality clauses of both federal and state constitutions the trustees vested with these powers must be directly representative of the people of the district. Appellants, whose constitutional rights have been violated, are not required to resort to the General Assembly for relief. Any person whose right to vote is impaired has standing to sue in the courts. Gray v. Sanders, 372 U.S. 368, 375, 83 S.Ct. 801, 9 L.Ed.2d 821.

The district contends, however, that the statutory formula for the allocation of trustees is based upon school enumeration, not population, and "therefore, the 'one man-one vote' principle which relates to population is not applicable." The argument is that school enumeration refers to persons who are minors of school age and has nothing whatever to do with population or voters; that there is no reasonable connection or mathematical relationship between the number of students of school age and the number of people or voters resident within a school district, and that the General Assembly had the right in its discretion to use school enumeration as the basis for allocating trustees among the component school districts.

This contention cannot be sustained. The principle of equal representation is fully applicable in the instant situation notwithstanding the statutory formula is based upon school enumeration rather than population. In either event the elected trustees must be apportioned on the basis of population—total population—and not on the basis of any artificial classification that necessarily abridges the principle of equal representation of *the people*, such as representation according to the number of trees or acres,[2]

2. Reynolds v. Sims, supra, 377 U.S., l.c. 562, 580.

or the number of persons in the district between the ages of six and twenty years. "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies." Reynolds v. Sims, supra, 377 U.S., l.c. 567, 84 S. Ct., l.c. 1384, 12 L.Ed.2d, l.c. 530.

The allegation of a population disparity of the proportion alleged by plaintiffs states a claim of invidious discrimination against the voters resident in the larger district, entitling them, on proof or admission of such a population differential, to a judgment invalidating the statute authorizing election of representatives from such unequally populated districts, whether the statutory formula is based upon population, school enumeration or any other factor. This is for the reason that every elector in the junior college district is entitled to protection against the dilution of the weight of his individual vote in comparison with the weight accorded the votes of others by reason of a general population differential between his school district and other more favored districts, and indeed is entitled to be protected against the diminishing of the weight of his vote by reason of a population differential as to persons between the ages of six and twenty in different districts.

The circuit court therefore erred in sustaining and should have overruled the motions to dismiss the petition.

Robert E. Seiler, Judge

Supreme Court of the United States

No. 938 --- , *October Term, 19* 68

Della Hadley, et al.,

Appellants,

v.

The Junior College District of Metropolitan Kansas City, Missouri, et al.

APPEAL from the Supreme Court of the State of Missouri.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

March 3, 1969

FILE COPY

FILED

JAN 13 1969

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 37

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER, and GWENDOLYN M. WELLS,
Appellants,

VS.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN P. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

JURISDICTIONAL STATEMENT

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AND

HONORABLE NORMAN P. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the Supreme Court of Missouri, en banc, entered on September 9, 1968,

holding that §178.820, R.S.Mo. (Cum. Supp., 1967), V.A.M.S., providing for the method of election of state junior college district trustees does not violate the Fourteenth Amendment to the U. S. Constitution. This statement is submitted to show that the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument for their resolution.

OPINION BELOW

The opinion, judgment and decree of the Supreme Court of Missouri is reported in 432 S.W.2d 328.

A copy of the opinion and judgment is appended hereto as Appendix I. The dissenting opinion of Judge Seiler is appended as Appendix II.

JURISDICTION

This is a junior college redistricting case, involving the constitutionality of part of §178.820, R.S.Mo. (Cum. Supp., 1967), V.A.M.S. This proceeding is brought pursuant to 28 U.S.C., Section 2101(c). The date of the judgment sought to be reviewed and the date of its entry is September 9, 1968. The order denying a rehearing is dated October 14, 1968. The notice of appeal was filed November 14, 1968 in the Supreme Court of Missouri. The statutory provision believed to confer on this court jurisdiction of this appeal is 28 U.S.C., Section 1257(2) since the validity of a state statute is in question on the ground of its being repugnant to the Constitution of the United States, and the decision of the Supreme Court of Missouri was in favor of its validity. The cases sustaining the jurisdiction on direct appeal are *Bantam Books, Inc.* v. *Sullivan,* (R.I. 1963) 83 S.Ct. 631, 372 U.S. 58, 9 L.Ed.2d 584, and *Winters* v. *People of State of N. Y.*, N.Y. 1948, 68 S.Ct. 665, 333 U.S. 507, 92 L.Ed. 840.

THE QUESTION PRESENTED

Whether those portions of §178.820-1, R.S.Mo. (Cum. Supp., 1967), V.A.M.S., which under certain circumstances establish a formula for election of trustees from component school districts within a junior college district (rather than at large within the entire district) are unconstitutional under the equal protection clause of the Fourteenth Amendment to the United States Constitution, as a denial of the "one-man, one-vote" principle.

STATUTE INVOLVED

The validity of §178.820-1, R.S.Mo. (Cum. Supp., 1967), V.A.M.S., is involved and it is set out herein verbatim as follows:

> "In the organization election six trustees shall be elected at large [except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district]. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years

each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. [If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years.] The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each." (Brackets added).

Only the bracketed portions of the statute, providing for election of trustees from component school districts under certain enumeration ratios, are attacked as unconstitutional. The statutory provisions for at large elections are not in question. The statute's official publication is Page 325, §13-84 of the Missouri Laws, 1963. It may also be found in Volume 11A, Vernon's Annotated Missouri Statutes, Page 353, as §178.820.

STATEMENT OF THE CASE

Appellants are four citizens and taxpayers of the Kansas City School District and of the appellee junior college district, one of them being a trustee of the district. Defendants are the junior college district, its other trustees and secretary, and the attorney general of Missouri. Appellants seek to apply the "one man-one vote" principle to the election of all trustees of the district.

The federal questions sought to be reviewed were first raised in the Circuit Court of Jackson County, Missouri, by the appellants' first amended petition in which they allege that the statutory formula for the election of trustees from subdistricts is unconstitutional and violates their

rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution (Pages 14-16 and 18-19 of Record) and passed on by the court by its sustaining defendants' (appellees') motion to dismiss and entering a final judgment of dismissal with prejudice (Page 29 of Record). The questions presented were then raised in the Supreme Court of Missouri by the agreed Stipulation and Statement of the Case filed under Missouri Supreme Court Rule 82.13 (Page 39 of Record), and by inclusion in appellants' Points and Authorities presented to the Missouri Supreme Court. That court specifically considered the constitutional question and held that the statute was valid under the Fourteenth Amendment to the United States Constitution (Page 56 of Record).

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the laws of the State of Missouri and specifically under the provisions of R.S.Mo. 178.770 through 178.890.

The geographical boundaries of the district include parts of Jackson, Clay, Cass and Platte counties for a total of 400 square miles. Since its organization, the Junior College District has maintained a junior college offering courses to all students enrolled therein. The district comprises Kansas City School District No. 33, Center School District No. 58, Consolidated School District No. 1 (Hickman Mills), Consolidated School District No. 2 (Raytown), Consolidated School District No. 4 (Grandview), Reorganized School District No. 7 (Lee's Summit), North Kansas City School District No. 74, and Belton School District No. 124.

The phrase "school enumeration" as used in R.S.Mo. 178.820 means an enumeration of all persons between the

ages of 6 and 20 years, resident within each component school district (R.S.Mo. 167.011). Section 178.820 of the Revised Statutes of Missouri provides that if there are in a junior college district one or more school districts with more than 33-1/3% and not more than 50% of the total school enumeration of the junior college district as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the district. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration of the junior college district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the junior college district. If any school district has more than 66-2/3% of the total school enumeration of the district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the junior college district.

The table on the second page of Judge Seiler's dissenting opinion (Appendix II) sets out the enumeration figures for the district for the years 1963-64 through 1966-67 and shows that although Kansas City School District No. 33 has had from 59.49% to 63.55% of the total school enumeration of the district, it has received only 50% of the board representation. The following table in the dissenting opinion sets out the figures for all nine of the Missouri junior college districts and, except for the three in which trustees are elected at large, reflects the large disparity between the percent of enumeration of the large component districts and their actual percentage of representation on the boards of trustees.

Appellants contend that the statutory formula, facial and in fact, discriminates against the voters in the larger

component school districts and results in malapportionment of all six of the state junior college districts in which the trustees are elected under the statutory formula.

A junior college district has the power to sue and be sued, to levy and collect taxes within the limitations of §§178.770-178.890, V.A.M.S., to issue bonds and exercise the same corporate powers as common and six-director school districts, other than urban districts, except as otherwise provided by law, §178.770; to provide instruction, classes, school or schools, determine per capita cost of college courses, collect approved nonresident tuition fees and charges to resident pupils, §178.850; to conduct hearings and suspend or expel pupils on disciplinary charges, §167.161; to make rules and regulations for the organization, grading and government of the district, §171.011; to let contracts, employ and dismiss teachers and approve bills, §178.830; to appoint employees and define and assign their powers and duties and fix their compensation, §178.860; to pass on annexation of school districts to the junior college district, §162.441, and to acquire real property by condemnation, §177.041.

THE QUESTIONS ARE SUBSTANTIAL

This Court has applied the "one man, one vote" principle to Congressional Districts in *Wesberry* v. *Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), to state legislatures in *Reynolds* v. *Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and companion cases, and to county governing bodies in *Avery* v. *Midland County, Texas*, 390 U.S. 474, 20 L.Ed.2d 45, 88 S.Ct. 1114 (1968).

Other distinguished courts have applied the doctrine to city councils, including the Supreme Court of Missouri, in *Armentrout* v. *Schooler*, Mo.Sup. (1966), 409 S.W.2d 138,

and *Ellis* v. *Mayor and City Council of Baltimore*, 352 F.2d 123 (1965) (C.A. 4).

Other courts have applied the doctrine to school districts, *Meyer et al.* v. *Board of Education of Carroll County*, (Iowa Sup. Ct.) (1967) 152 N.W.2d 617; *Strickland* v. *Burns*, 256 F.Supp. 824 (1966) (D.C. Tenn.); *Delozier et al.* v. *Tyrone Area School Board*, 247 F.Supp. 30 (D.C. Penn.) (1965), and *Pitts* v. *Kunsman*, 251 F. Supp. 962, 964-5.

(1) Government of schools is a matter of major national concern.

As Chief Justice Warren stated in *Brown* v. *Topeka Board of Education*, 74 S.Ct. 686, 691, 347 U.S. 483, "Today education is perhaps the most important function of state and local governments". The statement made in 1954 in the context of racial integration of schools has even greater validity today. Among our major governmental domestic concerns is the conducting of the business of educating our young. A time honored and uniquely American concept holds that the public school system and the education of all our citizens are the responsibility of the entire community. Accordingly the tax burden of school support is that of the general citizenry, which also is commonly the electorate for decisions affecting schools. It would therefore seem that the principle of electoral democracy and equality should have one of its most important applications in local school matters.

(2) Statute produces facial and actual malapportionment.

The appellants' petition and the facts stipulated present a classical reapportionment issue in a relatively clear cut and simple set of facts. If the doctrine of equality of voters' rights applies to an election for school

directors or trustees, the Missouri statute, as a matter of statutory formula, compels malapportionment. The application of the formula in the six junior college districts to which it applies has, in actual fact, resulted in under-representation of voters in the large component districts in ratios as high as two to one. The formula, limiting the representation of the large school districts, automatically produces under-representation of the large districts and over-representation of the small districts. The only question in each case is as to the extent of the under-representation produced by the formula. The table will illustrate:

Enum. of Dist.	No. Trustees	% Rep.	Max.% Enum.	Max. Malapp.
1/3 but under 1/2	2	33.3%	49+%	2 to 1
1/2 but under 2/3	3	50.0%	66+%	2 to 1
2/3 or over	4	66.7%	99+%	1 to Infinity

Conceivably a large school district might, for example, have 90% of the junior college district population. Its representation on the board would be 4 as against 2 members representing the smaller districts with 10% of the population, a malapportionment of 1 to 4-1/2 in favor of the smaller districts. Actually, in Missouri-Western district, St. Joseph has 80% of the population and 4 trustees against the 2 trustees from 20% of the district, an actual malapportionment of 2 to 1. The second table in the dissenting opinion illustrates that the actual representation in the large districts ranges as high as a variance of 46.4% from the norm. By dividing the percentage of directors allocated to the largest school district in each junior college district into the percentage of its enumeration we find that in each case the large component district is under-represented. In Saint Louis the variance from the norm is 37.1%, in Jasper County 46.4%, in Three Rivers 11.4%, in Sedalia 28.9%, in Missouri-Western 20.2% and in the Kansas City District 27.1%. Significantly the variance

may move only in one direction—to the detriment of the larger school districts (usually the urban area) and to the great advantage of the smaller districts (usually suburban). The cases hold that variances, though small, are automatically suspect and subject to constitutional attack as invidious, where the variance is demonstrated to favor one segment of the population. In *Lucas* v. *Colo. Gen. Assembly,* 377 U.S. 713, 84 S.Ct. 1459, 12 L.Ed.2d 632, 646, Chief Justice Warren said "disparities from population based representation, though minor, may be cumulative instead of off-setting, where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect".

(3) Apparent conflict of Avery and Sailors.

This court, in *Avery* v. *Midland County, Texas,* 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968), although dealing with the election of county commissioners, suggests that voting for school boards falls within the ambit of its decision when it said "If voters residing in oversize districts are denied their constitutional right to participate in the election of state senators, precisely the same type of deprivation occurs when the members of a city council, school board or county governing board are elected from districts of substantially unequal population".

Confusion however exists because of the dicta of this court in *Sailors* v. *Board of Education,* 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650. The majority opinion of the Supreme Court of Missouri in the instant case relied on *Sailors* for the proposition that the "one man, one vote" doctrine does not apply to governmental agencies which perform "essentially administrative functions" which are not legislative "in the classical sense". On the other hand the dissenting opinion of Judge Seiler points out that the issue was not presented by the facts of that case, Justice

Douglas pointing out that the Michigan system of selecting members of the county school board is basically appointive rather than elective.

The Supreme Court of Iowa in *Meyer* v. *Board of Education*, 152 N.W.2d 617, rendered after this court's ruling in *Sailors*, viewed this court's action in *Sailors* as not passing on the Iowa question, where the legislature (as in the instant case) provided for the *election* of the county board of education.

It appears to appellants that *Sailors* merely suggests that the extent of the legislative powers of a governmental agency may be a factor in determining whether an election is required, but that if the statute (as here) specifically provides for an election in which all members of the electorate may vote, then the votes of all voters shall be equally weighted as closely as practicable. In view of this court's holding in *Avery*, it seems that the "legislative-administrative" distinction relied upon by the Supreme Court of Missouri, is not tenable.

CONCLUSION

We point out that if the court strikes down the component subdistrict formula provisions of the Missouri statute, there would be no disruption of election procedures since remaining provisions provide for at-large elections.

It is respectfully submitted that substantial federal questions are presented which merit plenary consideration by this court.

Respectfully submitted,

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APPENDIX I

Majority Opinion of the Supreme Court of Missouri In Banc

IN THE

SUPREME COURT OF MISSOURI

IN BANC

DELLA HADLEY, et al.,
Appellants,
vs.
THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, et al.,
Respondents.

No. 52,758

The plaintiffs here challege as unconstitutional the method prescribed by § 178.820, RSMo (Cum. Supp. 1967) for the election of trustees of the Junior College District of Metropolitan Kansas City and, supposedly, of all other existing junior college districts in Missouri. This suit is one for a declaratory judgment and permanent injunctions. Plaintiffs are five citizens and taxpayers of the defendant district and of the Kansas City School District; two of them are members of the Board of Trustees of the defendant district. The defendants are the district, its other four members, its Secretary, and the Attorney General of Missouri. Plaintiffs assert: that they fairly represent, as a class, all persons similarly situated in the State of Missouri (including those in other junior college districts) "being chosen so as to fairly insure adequate representation of all;" that the questions raised are of common and general interest to all taxpayers and voters of the Kansas City School

District; that the interested persons are too numerous to join; and that the defendants here are representative of all junior college districts in the state, their trustees, and their secretaries. There are eleven junior college districts in Missouri. We recognize plaintiffs as fairly representative of the citizens and taxpayers of the Kansas City School District, but no facts whatever are alleged to justify the conclusion that they fairly represent the citizens and taxpayers of any other junior college district or any part thereof; nor are defendants shown by factual allegations to be representative of the other districts and their officers. Civil Rules 52.09, 52.08. No other plaintiffs or defendants have entered an appearance. We recognize the action as a proper class suit on behalf of the citizens of the Kansas City School District against the named defendants only. Perhaps the resulting distinction is, in this case, more academic than real, but the allegations and claims are too broad.

Section 178.820, about which these issues revolve, is as follows:

"1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the pro-

posed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

"2. Candidates for the office of trustee shall be citizens of the United States, at least thirty years of age who have been resident taxpayers of the proposed district for at least one whole year preceding the election and if trustees are elected other than at large they shall be resident taxpayers of those election districts for at least one whole year next preceding the election. All candidates for the first board of a district shall file their declarations of candidacy with the state board of education at least thirty days prior to the date of the organization election."

Plaintiffs seek to apply strictly the "one man, one vote" principle to the election of all trustees of the defendant district (which we shall refer to as the "district"). That district is composed of eight school districts, and includes parts of Jackson, Clay, Cass and Platte Counties,

for a total area of about 400 square miles. Since we are dealing only with the pleadings and a stipulation, we are limited in the facts which we may consider. Plaintiffs have, in their brief, gone somewhat outside the allegations of their first amended petition. A "Stipulation and Statement of Case" filed here under our Rule 82.13 adds little more; it eliminates one pleaded issue, states that the defendant district was organized on June 5, 1964, under Chapter 178, and that it has since maintained a junior college, offering 13th and 14th year courses; it lists in an exhibit the respective enumeration figures. Much of the statement of the case consists of a recital of the controversial legal contentions. It is stated that the latest "school enumeration" of the Kansas City School District was 123,754 and that the total school enumeration of the remaining seven school districts in the defendant district was 84,252. Thus, the enumeration of the Kansas City District is 59.49% of the total. It is also alleged that three trustees were elected from the Kansas City District and three from the remainder of the defendant district. Further allegations of the petition are, in substance: that the trustees exercise legislative and administrative functions, including "the levying of taxes, preparation of an annual budget, establishing of policies and procedures for the government of the district and otherwise functioning as the legislative and policy making body of the district;" that plaintiffs are denied the equal protection guaranteed by the 14th Amendment to the United States Constitution and by Article I, § 2 of the Missouri Constitution, by virtue of the dilution of their votes under the formula of § 178.820, and that this constitutes an invidious discrimination against them and against the other taxpayers and voters of the Kansas City School District; that their representation should be determined by population, and not

by school enumeration; that the votes of those voters in the other school districts are weighted "almost two times;" that defendant district is not a body representative of the people of the district, and that plaintiffs' votes have been "debased." Plaintiffs pray a declaration that those parts of § 178.820 providing the formula for electing trustees and § 178.840 (which provides more specifically for the details of elections), are unconstitutional and that broad injunctions shall issue, essentially stopping further elections until a proper reapportionment is made, either by legislation or by the court.

Motions to dismiss were filed, one by defendant Anderson separately, and one by the other defendants jointly. These challenged the validity of this suit as a proper class action against other junior college districts, and alleged that the petition failed to state a claim upon which relief could be granted. On December 2, 1966, the court entered an order sustaining both motions to dismiss but allowed plaintiffs 10 days to plead further; plaintiffs then filed a "Motion for Rehearing or New Trial" which was overruled. They filed no further amendment. The court thereupon denied leave to plaintiffs to dismiss Count I (the only part involved here) without prejudice, noted that plaintiffs had failed to plead further, and entered final judgment dismissing plaintiffs' petition and cause of action with prejudice. Appeal was duly taken.

While we are furnished with rather meager facts, it does appear that the defendant district was organized under Chapter 178, and that the Kansas City School District has, under the statutory formula, elected three of the six trustees. The record further shows, as already indicated, that the Kansas City School District contains 59.49% of the "school enumeration." That term is described in § 167.011 as a yearly (required) enumeration

of all persons in a school district between the ages of six and twenty, resident within the district. The stipulation shows the enumerations of the seven separate school districts other than the Kansas City District; these vary from 2749 to 23,865.

The issue is simply whether our statutory formula contained in § 178.820 is a violation of the equal protection provided by the federal and state constitutions. Plaintiffs argue that their votes are diluted to the extent that the voters in other districts (40.51%) elect one half of the trustees while their own district (59.49%) elects only the other half.

We shall spend no time in reviewing those cases which hold that the districts as apportioned for the election of members of state legislatures must be fixed on a one man, one vote principle, with substantial equality for the votes of all. Reynolds v. Sims, 377 U.S. 533, 12 L.Ed.2d 506; Lucas v. General Assembly of Colo., 377 U.S. 713, 12 L.Ed.2d 568. The principle has also been applied to state-wide primary elections. Gray v. Sanders, 372 U.S. 368, 9 L.Ed.2d 821, and to the apportionment of congressional districts. Wesberry v. Sanders, 376 U.S. 1, 11 L.Ed.2d 481. We pass those cases for a discussion of others which come closer to our problem.

In Avery v. Midland County, 390 U.S. 474, 20 L.Ed.2d 45, 88 S.Ct. 1114 (April 1, 1968), the court held that this requirement was applicable to the election of the members of a County Commissioners Court in Texas. Four members were elected from districts (one by each) and one at large. One district had a population of 67,906; the others 852, 414 and 828. The disproportion was thus enormous. The County Commissioners were found to have these powers: to appoint various officials, let contracts, build roads and bridges, administer welfare funds, supervise and

regulate elections, fix the county tax rates, adopt the budget, operate all county institutions, fix the boundaries of school districts, fix the boundaries of its own electoral districts, act as a board of equalization on all county tax assessments, and issue county bonds. The court also had authority to construct and operate an airport and libraries and to control public housing. The Texas Supreme Court held that the existing districts were improperly created, but that other elements besides population could be considered. The opinion of the United States Supreme Court seems to have recognized clearly that this body was the *"general governing body"* of the county, and it quoted from a commentary on the Texas Statutes to that effect. The court stated that the Commissioners Court had both legislative and administrative functions, but that it could hardly be classified according to "civics texts;" that, however, it was representative of "most of the general governing bodies of American cities, counties, towns and villages." Many facets of its powers and duties were recited to corroborate this conclusion. Specifically, the court held, at 20 L.Ed.2d l.c. 53, and we quote: "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body." It would, of course, be futile to discuss the three dissenting opinions.

We next discuss the case of Sailors v. Board of Education, 387 U.S. 105, 18 L.Ed.2d 650; however, we shall begin with the decision of the Three Judge District Court shown at 254 F. Supp. 17, 28. There the members of a 5-member County Board of Education were elected by delegates (one) from each of 39 local school districts in the county. The County Board had the power to transfer local districts (or parts of districts) or essentially to annex and de-annex; it appointed the county superintendent; it

levied school taxes, made and adopted the budget, conducted the school census, acted as consultant to the various districts, and conducted special education programs. There were 39 local districts; one of these contained 55.6% of the total county population. The greatest population disparity between districts was approximately 200-1, but each local district elected one delegate to the assembly which, in turn, elected the county board. The majority of the District Court held: that the courts are not required to review the apportionment of every "board and agency of the several states, cities, villages, counties, parishes, townships, metropolitan districts, and all other such policy and decision making bodies which are in existence for the purpose of carrying out the intent of the legislatures which authorize their creation;" that the proper apportionment of such bodies should be left to the action of the legislatures, which are now required to be properly apportioned themselves.

The opinion of the Supreme Court on appeal is shown at 387 U.S. 105, 18 L.Ed.2d 650. The court noted that the members of the local school boards were elected by the people (concerning which no question was raised) and that these boards, as stated, elected one delegate each to an assembly which elected the county board. As we have already noted, the local districts varied immensely in population (and in the school census). The court reiterated its previous view (Sims, supra) that local political subdivisions and boards are created as convenient agencies to assist in carrying out such of the state functions as may be entrusted to them, and that the extent of their respective powers is a matter resting in the absolute discretion of the state. It further held: that this method of choosing the members of the county board, which it specifically described as of "non-legislative character," was not offensive to constitutional requirements, and that much in

government consists of the "science of experiment" and the exercise of a sound discretion; also, that the county board performed "essentially administrative functions," which were not legislative "in the classical sense." While the court certainly considered the method by which the board was selected, the opinion seems, in our view, to be largely founded upon its ruling that the functions of the board were "essentially administrative" and not legislative. We shall refer again to this feature later, as applied to the present case.

The above cases are the only ones of the Supreme Court which really seem at all applicable here. Plaintiffs cite and discuss federal and state cases which apply the requirement of equal protection on the one man, one vote theory to city governing bodies. Ellis v. Mayor and City Council of Baltimore, CA 4, 352 F.2d 123; Davis v. Dusch, CA 4, 361 F.2d 495; Thayer v. Garraghan, 279 N.Y.S.2d 441; Seaman v. Fedourich, 16 N.Y.2d 94, 209 N.E.2d 778; and our own case of Armentrout et al. v. Schooler et al., Mo., 409 S.W.2d 138. We are not concerned here with these cases for they concern only "local legislative bodies exercising general governmental powers at the municipal level" (Seaman, supra). Counsel also cite cases dealing similarly with elections of County or Town Boards of Supervisors. Bianchi et al. v. Griffing, D.C.N.Y., 238 F. Supp. 997; Dyer v. Rich, D.C.Miss., 259 F. Supp. 741; Bailey v. Jones et al., 81 S.D. 617, 139 N.W.2d 385; State ex rel. Sonneborn v. Sylvester, 26 Wis.2d 43, 132 N.W.2d 249; Lodico v. Board of Supervisors, D.C.N.Y., 256 F. Supp. 442; Martinolich v. Dean, D.C.Miss., 256 F. Supp. 612. These cases were all decided on the theory declared in Avery, namely, that the board, court or body involved was one *exercising general governmental functions.* The present case is distinguishable upon its facts, even if we were otherwise bound by such decisions. Counsel have also cited four

cases which supposedly apply the rule to school board election. They are: Strickland v. Burns, D.C.Tenn., 256 F. Supp. 824; Meyer v. Campbell, Iowa, 152 N.W.2d 617, De Lozier et al. v. Tyrone Area School Board, D.C.Pa., 247 F. Supp. 30; Pitts v. Kunsman, D.C.Pa., 251 F. Supp. 962. In the first place, we are not bound by any of these decisions; in addition, we are not impressed with the logic employed. In Strickland, the majority of the court apparently made no effort to distinguish between school districts and local bodies having general governmental powers and functions, but applied the same broad brush to all; a county school board was involved. In Meyer a county board was again involved; the element of population had been totally disregarded and the districts were specifically based on geographical area or size; moreover, the court there, in our view, misconstrued the opinion in Sailors by considering that it constituted authority for a requirement that in all elections of members of a local public body (if the positions are not appointive) there must be an equal apportionment on a population basis, regardless of the nature and extent of the functions and powers of the body. De Lozier again failed to distinguish between the functions of school boards and bodies with general governmental powers. Pitts, supra, merely held that the attempted mode of election ignored a state statute of Pennsylvania. And see 363 F.2d 841, where the order was stayed in part by the Court of Appeals. All of these four cases, except Meyer, were decided before the decision in Sailors.

A school district, unlike a municipal corporation (city or county) is an instrumentality of the state created for one single purpose and with one single function,—education. State ex rel. School Dist. v. Gordon, 231 Mo. 547, 133 S.W. 44; Community Fire Protec. Dist. v. Board of Education, Mo., 315 S.W.2d 873. It is truly a special purpose unit of government. In an article by Prof. Jack B. Wein-

stein in 65 Columbia Law Review 21 (1965), there appears a thorough discussion of the reapportionment decisions as they affect counties and other forms of municipal government. The article was cited in a note to the dissenting opinion of Mr. Justice Harlan in Avery v. Midland County, 20 L.Ed.2d at loc. cit. 58. The author's conclusion is that it is doubtful if the one man, one vote principle should be applied to *special purpose* units of local government which have limited purposes and functions, and that the legislatures should have much freedom in creating such units, whether elective or appointive.

The defendant district may only levy taxes to the extent specifically prescribed by statute, except by a vote of the people; it may not incur indebtedness and issue bonds except by a vote of the people. It provides buildings, hires teachers and employees generally, makes rules and regulations for governing the students, and administers the business of the 2-year junior college; it may, when necessary, acquire property by condemnation as most other public bodies may do, including levee districts, fire protection districts and drainage districts. The State Board of Education has supervisory control over the defendant district and all other junior college districts, § 178.780. That Board establishes the "role" of all junior colleges, administers the "state financial support program," formulates uniform policies on "budgeting, record keeping and student accounting," establishes entrance requirements and "uniform curricular offerings," is responsible for all "accreditation," and it is required to "supervise the junior college districts." A junior college district, under our plan, has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers.

In this situation we are not bound by any precedent. We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is *not* a "unit of local government having general governmental powers over the entire geographic area served by the body." Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54. In Sailors the court said, 387 U.S. loc. cit. 110: "We do not have that question here, as the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense." It appears to us that the non-legislative character of the board in Sailors was the determining factor. In the present case the legislature and *the people* have retained all essential legislative powers. It would certainly seem that the true nature and character of a board's powers would furnish a more substantive test than would the procedure used in its selection, even where some form of election is involved.

We thus hold that the one man, one vote principle does not properly apply to such a body as the defendant district; we further hold that §§ 178.820 and 178.840 are valid both under the 14th Amendment to the United States Constitution and under § 2 of Art. I of the Missouri Constitution. In this view it is immaterial whether the trustees are elected on the basis of population or "school enumeration." We may note here, however, that the yearly school enumeration does, in all probability, furnish a more accurate guide than does an outdated federal census. We also note, though the matter is not decisive here, the elasticity allowed in § 178.820 to the larger local districts in the elec-

tion of trustees. The Kansas City District with 59.49% of the school enumeration elects three trustees; if the enumeration exceeds 66-2/3% it will elect four. This method is a far cry from the malapportionments shown in the decided cases.

If, as indicated in Sailors, the states should be allowed to "experiment" in their political and governmental processes (387 U.S. loc. cit. 109), and if much is to be left to the discretion of the states (Sailors, again), we fail to see how the method provided here by the Missouri legislature may be deemed invalid. The judgment dismissing the first amended petition and the cause with prejudice is affirmed.

Henry I. Eager, Judge.

All concur except Seiler, J., who dissents in separate dissenting opinion filed.

APPENDIX II

Dissenting Opinion in the Supreme Court of Missouri

I respectfully dissent and adopt as my dissent the opinion prepared by Judge Houser, Commissioner in Division One. His opinion (without setting it out in quotation marks and after removal of those portions which would repeat the facts set forth in the majority opinion) reads as follows:

The junior college district is a body corporate and a subdivision of the state, organized under and possessing the powers, functions and duties as prescribed in §§ 178.770 through 178.890, V.A.M.S. The district was organized June 5, 1964 pursuant to an election held May 26, 1964. Its boundaries include parts of Jackson, Clay, Cass and Platte Counties for a total of 400 square miles. The junior college

district comprises Kansas City School District No. 33, Center School District No. 58, and six other school districts (Hickman Mills, Raytown, Grandview, Lee's Summit, Belton and North Kansas City). Here are the enumeration figures for the junior college district for the years shown:

Component School District	1963-64	1964-65	1965-66	1966-67
#33 Kansas City	112,815	121,292	123,388	123,754
#58 Center	6,215	6,666	6,903	7,431
R-VII Lee's Summit	5,475	6,148	6,482	6,875
C-1 Hickman Mills	10,553	13,838	15,175	15,634
C-2 Raytown	16,466	19,992	21,599	21,202
C-4 Grandview	5,117	5,788	6,151	6,496
#74 N. Kansas City (Clay)	18,662	21,103	22,633	23,865
#124 Belton (Cass)	2,205	2,443	2,628	2,749
	177,508	197,270	204,959	208,006
#33 Kansas City	63.55%	61.48%	60.20%	59.49%
Other	36.45%	38.52%	39.80%	40.51%

The enumeration figures for all of the junior college districts in the state, showing representation of boards of all junior college districts follow:

	Total District	Largest Component School District			
District	Enumeration	Enumeration	Directors	Percentage of Directors	Percentage of Enumeration
St. Louis-St. Louis Co.	336,277	153,656	2	33.3%	45.7%
Jasper Co.	20,954	10,224	2	33.3%	48.8%
Three Rivers	18,005	6,688	2	33.3%	37.0%
Sedalia	8,141	5,248	3	50.0%	64.4%
Mo. Western	28,231	22,619	4	66.7%	80.0%
K. C. Mo.	177,508	112,815	3	50.0%	63.6%
Newton-McDonald			(At large)		
Jefferson Co.			(At large)		
Mineral Area			(At large)		

At the present time three of the trustees on the board of defendant junior college district were elected from Kansas City School District No. 33. The other three trustees were elected from the remainder of the junior college district.

In Armentrout v. Schooler, Mo. Sup., 409 S.W.2d 138, we extended to seats on a city council the principle that seats in the legislative branch of the state government must be apportioned substantially on the basis of population. In applying the principles of Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L.Ed.2d 506; Gray v. Sanders, 372 U.S. 368, 83 S. Ct. 801, 9 L.Ed.2d 821, and Wesberry v. Sanders, 376 U.S. 1, 84 S. Ct. 526, 11 L.Ed.2d 481, et al., to that local organ of government we considered that the Fourteenth Amendment to the federal constitution applies not only to the state but also to every creature of the state to which the latter has delegated powers of government, and reasoned that an elected city council, primarily a legislative body to which broad legislative powers and governmental functions of a general nature have been delegated as an agency, arm or instrumentality of the state, must as a matter of logic be governed in its composition by the same principles applicable to its creator; and that therefore voters selecting representatives to sit on a municipal legislative body are entitled to the same equal protection and rights in casting such votes as those enjoyed by voters on the state level voting on candidates for the offices of representative and senator in state and national legislative bodies.

Now we are called upon to determine whether as a matter of constitutional right this same principle must be further extended and applied to seats on the board of trustees of a junior college district, which is not primarily

a legislative body exercising general governmental functions.[1]

As pointed out in Armentrout, the Equal Protection of the Laws Clause of the Fourteenth Amendment applies to the State of Missouri and to every governmental creature of the state to which it has delegated the powers of government. "The State of Missouri may exercise its legislative powers only through a legislative body apportioned on a population basis, and it logically follows that the agency, arm or instrumentality to which the state delegates some of its powers should be governed by the same principle. Seaman v. Fedourich, [16 N.Y.2d 94, 262 N.Y.S.2d 444, l.c. 449, 209 N.E.2d 778, l.c. 782 [4]]; Brouwer v. Bronkema, No. 1855, Cir. Ct. Kent County, Michigan, September 11, 1964." Armentrout v. Schooler, supra, 409 S.W.2d, l.c. 143. The Wisconsin Supreme Court

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1. A junior college district has the power to sue and be sued, to levy and collect taxes within the limitations of §§ 178.770-178.890, V.A.M.S., to issue bonds and exercise the same corporate powers as common and six-director school districts, other than urban districts, except as otherwise provided by law, § 178.770; to provide instruction, classes, school or schools, determine per capita cost of college courses, collect approved nonresident tuition fees and charges to resident pupils, § 178.850; to conduct hearings and suspend or expel pupils on disciplinary charges, § 167.161; to make rules and regulations for the organization, grading and government of the district, § 171.011; to let contracts, employ and dismiss teachers and approve bills, § 178.830; to appoint employees and define and assign their powers and duties and fix their compensation, § 178.860; to pass on annexation of school districts to the junior college district, § 162.441, and to acquire real property by condemnation, § 177.041.

expressed the same thought in this language: "Since the composition of the legislature must conform to the principle of equal representation, it is logical that the arm or political subdivision of such legislature enacting legislation should be governed by the same principle of equal representation." State ex rel. Sonneborn v. Sylvester, 26 Wis.2d 43, 132 N.W.2d 249, 256. See also Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401, 3 L.Ed.2d 5. Sections 2 and 25 of Article I, Constitution of Missouri, 1945, also apply to the State and to those of its agencies, arms and instrumentalities to which the State has delegated powers of government.

School districts, including junior college districts, "* * * are public corporations, form an integral part of the state, and constitute that arm or instrumentality thereof discharging the constitutionally intrusted governmental function of imparting knowledge and intelligence to the youth of the state that the rights and liberties of the people be preserved." School Dist. of Oakland v. School Dist. of Joplin, 340 Mo. 779, 102 S.W.2d 909, 910. A junior college district is a creature, a subdivision of the state. § 178.770, V.A.M.S. Its board of trustees exercises the powers delegated to it by the General Assembly. While these powers are primarily administrative in nature, limited by law and relate to the special purpose of education, they include legislative powers of vital importance to the state materially and substantially affecting the lives, property and welfare of the citizenry. The General Assembly could have provided for the exercise of these powers by officials chosen by appointment, or by a combination of the appointive and elective methods of selection, but it did not do so. The General Assembly provided that the officials in whose hands these powers of government are entrusted shall be chosen by a vote of the people. The trustees rep-

resent the people of the district and reflect their views. Having been given the right to select their representatives to sit on junior college district boards, the people are entitled to the same protection in the exercise of their suffrage as that enjoyed by voters on the state level voting for their senators and representatives, or voters on the municipal level voting for their city councilmen, without dilution or diminution of the weight of their individual votes because of the mere fact that they happen to reside in a certain school district.

This logical conclusion has the support of substantial and respected authority. The difference between this case and Reynolds v. Sims, supra, is one of degree and not of principle. In addition to the cases and legal scholars upon which we relied in Armentrout, supra, 409 S.W.2d, l.c. 142, 143, several jurisdictions have reached the same result in cases involving the election of school officials.

In Meyer v. Campbell, Iowa Sup. (1967), 152 N.W.2d 617, it was held that county boards of education, selected by popular vote, are direct representatives of the people and that the state and federal constitutions require their election on an equal representation basis. After analyzing Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L.Ed.2d 663, Gray v. Sanders, Wesberry v. Sanders, and Reynolds v. Sims, supra, the Iowa Supreme Court considered that "* * * there is nothing in these cases that indicates that the fundamental principle that all men are created equal, and thus accorded an equal vote, should not apply similarly to other inferior bodies that possess legislative power, when the method of their selection is by the elective process. Hanlon v. Towey, 274 Minn. 187, 142 N.W.2d 741 (1966), and citations; State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 132 N.W.2d 249. Since it is a basic principle of representative government that the weight of a person's

vote does not depend on geographical boundaries, it follows logically that any inferior *elective* body, that is representative of the people, be representative of all the people equally. Seaman v. Fedourich, 16 N.Y.2d 94, 262 N.Y.S.2d 444, 209 N.E.2d 778; Armentrout v. Schooler (Mo.), 409 S.W.2d 138 (1966); Bianchi v. Griffing, [D.C., 238 F. Supp. 997]. * * * Since our own legislature chose to make members of the board elective rather than appointive, it intended that these members represent the people and not geographical land areas. Each voter similarly situated is entitled to equal representation." 152 N.W.2d, l.c. 621. After determining that the primary functions of county boards of education were administrative the court concluded that substantial legislative functions were delegated to them "sufficient to require member selection under the one man-one vote principle announced in Reynolds v. Sims, * * * when the legislature also provided that the member be chosen by election." Ibid, l.c. 622 [8].

In Strickland v. Burns, M.D. Tenn. (1966), 256 F. Supp. 824, it was held that a Tennessee statute providing that the School Commission be composed of 11 members, one commissioner to be elected from each of 11 school zones (which were unequally populated), violated the Fourteenth Amendment. The court stated that "The plaintiffs herein have established that their individual votes in electing members of the Rutherford County School Commission have been substantially diluted by the provisions of the Act complained of. They have established that the only basis for such dilution is their place of residence. No showing has been made by defendants that would justify the discrimination.

"We hold, therefore, that the discrimination existing is invidious. Since we can find no basis for applying the 'one man, one vote' rule to the congeries of powers possessed

by the Legislature itself and at the same time denying its application to a subordinate body simply because it possesses a fractional part of those powers, so long at least as the fractional part cannot be said to be insignificant or unimportant, we must also hold that the apportionment provisions of the Act complained of are void as violative of rights secured by the Equal Protection Clause of the Fourteenth Amendment." 256 F. Supp., l.c. 827.

In Delozier v. Tyrone Area School Board, W.D. Penn. (1965), 247 F. Supp. 30, it was held that the directors of the board of a consolidated school district, elected by popular vote, are subject to the principle of equal representation laid down in Reynolds v. Sims, supra; that a local school district, being the arm or agency of the state to administer its educational system, is not immune from the constitutional requirement. Noting that the principle had been applied to various elective bodies, local, municipal, county and school districts, "where that body is elective and exercises legislative power," and citing State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 132 N.W.2d 249; Ellis v. City Council of Baltimore, D.C. Md. (1964), 234 F. Supp. 945; Brouwer v. Bronkema, Circ. Ct. Kent Co. Mich. (1964); Bianchi v. Griffing, E.D. N.Y. (1963-1965), 217 F. Supp. 166, 238 F. Supp. 997; and Damon v. Lauderdale County Election Commissioners, (Civil Action 1197-E) U.S.D.C., S.D. Miss. (1964), in support of its ruling, the court struck down the plan before the court as violative of the Equal Protection of the Laws Clause of the Fourteenth Amendment, wherein one representative would represent several times the voting power of another representative.

Pitts v. Kunsman, E.D. Penn. (1966), 251 F. Supp. 962, a case involving an administrative unit in a school system, recognized the principle that when representatives are

elected from individual districts each district under the Fourteenth Amendment, "must then have relatively the same population so as to obtain as nearly as possible equal weight for the franchise of each citizen. [Citing Reynolds v. Sims, Gray v. Sanders, Baker v. Carr, and Delozier v. Tyrone Area School Board.]"

Respondents deny the applicability or pertinence of these decisions, claiming that they either do not make or do not give proper consideration to the distinction between local government units exercising broad, general governmental functions through bodies whose functions are primarily legislative in nature, and local government units essentially administrative in character, organized for a special limited purpose, and they point out that we carefully made that distinction in Armentrout. The argument is that these special purpose bodies "exercise far fewer powers than do general purpose units of government and, therefore, their governing officials, even though they may be elected, are more concerned with administering the special purpose for which such governmental units exist than they are with representing and advocating the interests of their constituents"; that the functions of a junior college district are limited and circumscribed; that the state board of education has supervisory control over such districts; that the duties of the trustees are essentially administrative and "not legislative in the classical sense"; that the trustees are elected "not to serve constituencies and advocate their interests in enacting legislation and laws which will be applicable to all persons who live in the district, but to serve as administrators of the district for the limited purpose of providing a two-year college education." Granting that all of this is true, it does not militate against nor render inapplicable the principle of equal representation. The board of trustees of a junior college district is a representative body. The right in

question is the elector's right to an equal vote in the election of members of a representative body, to which has been delegated a number of legislative powers of vital importance to the State which materially and substantially affect the people of the district.[1] The fact that some or most of the functions of the trustees are administrative in nature and that the district is subject to supervisory control by the state board of education does not permit the abridgment of the rights of the electors to equality in casting their votes for members of the board.

The same argument was made as to a county board of supervisors and answered as follows in State ex rel. Sonneborn v. Sylvester, supra, 132 N.W.2d, l.c. 256: "The fact the county also performs administrative functions and is somewhat responsive or subject to the legislature does not justify the denial of the application of the equal-representation principle to county boards. Solely administrative duties would not call forth the application of the principle, nor do these administrative duties or the limited legislative powers destroy the fact that realistically the county today is a unit of government with vital powers over the lives of its residents. Those powers, which it may now exercise or may be given as a legislative body, require in our form of government the principle of equal representation be applied." In Meyer v. Campbell, supra, the Supreme Court of Iowa, adverting to Gray v. Sanders and Reynolds v. Sims, said, 152 N.W.2d, l.c. 624: "It now seems to us the principles which gave rise to those decisions must be applied to our present method of selection of members of the county board of education. Where the election of those members is required, and where as here the legislature provides for the election of these representatives of the people whether their function be considered legislative, quasi-legislative, or primarily administrative, their election must be made on a population basis, not upon area."

The fact that the governmental unit involved is on the local level and is smaller in size and scope than a governmental body operating on the state level does not make the trustees any less representative of the views of the citizens. As said by Judge Johnson in his dissenting opinion in a case involving county boards of revenue, "To the contrary, rather than limit the principles of *Reynolds*, as the majority opinion does, it would seem that these principles might well have their most meaningful application at the local level." Moody v. Flowers, M.D. Ala. (1966), 256 F. Supp. 195, 201.

Respondents further urge that if the principle of representation were to be applied to all local administrative units throughout the United States, such as fire, sewer, water, drainage, and metropolitan districts, and port authorities, "an extremely chaotic situation would be created thereby." By this decision we are not determining that every unit of local government must be organized on this principle. We are holding that the principle of representation applies to the members of the board of trustees of a junior college district to whom are delegated a substantial number of material and important legislative powers, where the board is elected by the vote of the people. Further extension of this principle must be made, if at all, on a case-by-case basis, depending upon the facts in each case. The granting or withholding of constitutional rights, however, cannot ever be made to depend upon the time, trouble or inconvenience involved, or whether "chaotic" changes upsetting traditional thought patterns will ensue.

After the argument of this case in division but before its submission en banc the United States Supreme Court handed down Avery v. Midland County, Texas, 390 U.S. 474, 88 S.Ct. 229, 20 L.Ed.2d 45 extending the principle of representation to the selection of the Midland County,

Texas Commissioners Court, which, although the general governing body of the county, has only limited powers. It was stated as beyond question that a state's political subdivisions must comply with the Fourteenth Amendment. The court broadly held that the Fourteenth Amendment forbids the election of local government officials from districts of disparate size; that "when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process. If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, *school board,* or county governing board are elected from districts of substantially unequal population." (Our italics.) The court turned aside the legislative-administrative argument, demonstrating that while the county commissioners court's legislative powers are negligible, apparently concentrated on the subject of rural roads, the court does have power to make many decisions having a broad range of impacts on the citizenry generally. While not denying the right of the states to devise mechanisms of local government with varying populations in residential districts, as where the governing body's functions are essentially administrative in nature or where the scheme is one of at-large voting, the court insisted upon the "requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." This latest expression of the United States Supreme Court on the subject is strong and compelling authority in support of the conclusion we have reached.

Respondents' reliance upon Sailors v. Board of Education, W.D. Mich. (1966), 254 F. Supp. 17, aff. 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650, is misplaced. The issue was not framed in that case. In Michigan the five-member county board of education is chosen not by the electors of the county but by delegates from the local school boards. The qualified school electors elect the local boards. A majority of the three-judge federal district court panel held that the rule of equal representation was inapplicable and dismissed the complaint. The United States Supreme Court affirmed, but gave no definitive answer to the question now before us. Justice Douglas pointed out that the Michigan system for selecting members of the county school board is basically appointive rather than elective, stating, "If we assume *arguendo* that where a State provides for an election of a local official or agency—whether administrative, legislative, or judicial—the requirements of Gray v. Sanders and Reynolds v. Sims must be met, no question of that character is presented. * * * Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man-one vote' has no relevancy."

The Attorney General argues that the government and control of a junior college district resides in and is exercised by the voters and the legislature; that "[t]he representative body which holds the key governmental powers in junior college districts is the state legislature. If the appellants desire changes to be made in these powers and there [sic] exercise, the appropriate place of redress is the state legislature." We do not agree. The government and control of a junior college district resides in and is exercised by the board of trustees, under the limitations and controls provided by law. The board of trustees is

the representative body which holds the "key governmental powers." Under the equality clauses of both federal and state constitutions the trustees vested with these powers must be directly representative of the people of the district. Appellants, whose constitutional rights have been violated, are not required to resort to the General Assembly for relief. Any person whose right to vote is impaired has standing to sue in the courts. Gray v. Sanders, 372 U.S. 368, 375, 83 S.Ct. 801, 9 L.Ed.2d 821.

The district contends, however, that the statutory formula for the allocation of trustees is based upon school enumeration, not population, and "therefore, the 'one man-one vote' principle which relates to population is not applicable." The argument is that school enumeration refers to persons who are minors of school age and has nothing whatever to do with population or voters; that there is no reasonable connection or mathematical relationship between the number of students of school age and the number of people or voters resident within a school district, and that the General Assembly had the right in its discretion to use school enumeration as the basis for allocating trustees among the component school districts.

This contention cannot be sustained. The principle of equal representation is fully applicable in the instant situation notwithstanding the statutory formula is based upon school enumeration rather than population. In either event the elected trustees must be apportioned on the basis of population—total population—and not on the basis of any artificial classification that necessarily abridges the principle of equal representation of *the people*, such as representation according to the number of trees or acres,[2]

2. Reynolds v. Sims, supra, 377 U.S., l.c. 562, 580.

or the number of persons in the district between the ages of six and twenty years. "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies." Reynolds v. Sims, supra, 377 U.S., l.c. 567, 84 S. Ct., l.c. 1384, 12 L.Ed.2d, l.c. 530.

The allegation of a population disparity of the proportion alleged by plaintiffs states a claim of invidious discrimination against the voters resident in the larger district, entitling them, on proof or admission of such a population differential, to a judgment invalidating the statute authorizing election of representatives from such unequally populated districts, whether the statutory formula is based upon population, school enumeration or any other factor. This is for the reason that every elector in the junior college district is entitled to protection against the dilution of the weight of his individual vote in comparison with the weight accorded the votes of others by reason of a general population differential between his school district and other more favored districts, and indeed is entitled to be protected against the diminishing of the weight of his vote by reason of a population differential as to persons between the ages of six and twenty in different districts.

The circuit court therefore erred in sustaining and should have overruled the motions to dismiss the petition.

Robert E. Seiler, Judge

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER and GWENDOLYN M. WELLS,
Appellants,

v

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS

Pursuant to Rule 16, paragraph 1(b) of this Court, appellees The Junior College District of Metropolitan Kan-

sas City, Missouri, James W. Stephens, President, William L. Cassell, Reed B. Kenagy, Jr., and Mrs. Y. B. Wasson, Members, and Linda L. Coulson, Secretary, of the Board of Trustees of said Junior College District, being all of the appellees except the Attorney General of the State of Missouri, move to dismiss this appeal on the ground that it does not present a substantial federal question.

QUESTION PRESENTED

Whether certain provisions of Section 178.820-1 of the Missouri Revised Statutes violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because they establish a certain percentage formula based upon school enumeration, the number of persons between the ages of six and twenty years, for the election of junior college trustees from component school districts.

STATEMENT

Appellees do not believe a restatement of the case is necessary, but certain provisions in the Missouri statutes regarding the organization and limitations of a junior college district—as well as its powers as enumerated by appellants (J.S. 7)—should be noted.

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the provisions of Sections 178.770 through 178.890 of the Revised Statutes of Missouri first enacted in 1961. (R. 35.)

Prior to the organization of any junior college district, the State Board of Education, which is appointed by the Governor (Mo. CONST., Art. IX, § 2(a); R.S.Mo. (1967 Supp.), § 161.022), establishes standards including whether

a junior college is needed, whether the assessed valuation will support it and whether there are a sufficient number of high school graduates in the proposed district. R.S.Mo. (1967 Supp.), § 178.770. The boundaries of the junior college district must coincide with the boundaries of the component school districts therein which provide educational courses through the 12th grade. *Id.*, § 178.790. Upon the petition of a certain percentage of the voters in each component school district praying that a junior college district be organized to offer 13th and 14th year courses, the State Board of Education ascertains if its standards are met and, if so, orders that an election be held. To carry, the proposal to organize a junior college district must receive a majority of the total votes cast, after publication notice of the organization election has been given. *Id.*, §§ 178.800, 178.810.

Section 178.820, which is attacked by appellants as unconstitutional, sets forth the procedure for election of the six junior college trustees, establishing a certain percentage formula based upon "school enumeration" which is defined elsewhere as "an enumeration of all persons between the ages of six and twenty years." R.S.Mo. (1967 Supp.), § 167.011.[1] If one or more component school districts has more than 33-1/3% and not more than 50% of the total school enumeration of the proposed district, as determined by the last school enumeration, then two trustees shall be elected from each such district and the remaining trustees shall be elected at large from the other school districts. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration, such district shall elect three trustees and the remaining three shall be elected at large from the remainder

1. Section 167.011 provides that the school board of each district in the State shall take such enumeration "during each school year . . . prior to the fifteenth day of May" with certain exceptions.

of the proposed district. If any school district has more than 66-2/3% of the total school enumeration, four trustees shall be elected from such school district and two trustees at large from the remainder of the proposed district.

There are eight component school districts in appellee The Junior College District of Metropolitan Kansas City, Missouri. In 1966-67, the Kansas City School District had 59.49% of the total school enumeration for the junior college district and accordingly has three trustees. The other three trustees were elected from the remaining seven component school districts, with 40.51% of the total school enumeration. (R. 41, J.S. 5a-6a.)

While a junior college district has certain enumerated powers (J.S. 7), the junior college district statutes themselves provide that all junior colleges so organized "shall be under the supervision of the state board of education." R.S.Mo. (1967 Supp.), § 178.780. This gubernatorially appointed board administers State financial support; formulates uniform policies as to budgeting, record keeping and student accounting; establishes uniform minimum entrance requirements and curricular offerings; and is responsible for the accreditation of all junior colleges under its control. *Ibid.* Furthermore, certificates to teach in the public schools of Missouri are granted and controlled by the State Board of Education and other authorities, not by the junior college district. *Id.*, §§ 168.021, 168.061, 168.071. And there are other limitations upon school districts which frequently require their obtaining voter approval. For example, any bond issue by any school district must be approved by two-thirds of the votes cast upon a ballot stating the amount and purposes of the loan. *Id.*, § 164.151. In the Junior College District of Metropolitan Kansas City, any annual tax levy cannot exceed ten cents per $100 valuation without voter approval. *Id.*, § 178.870.

ARGUMENT

The decision below is correct and there is no substantial federal question presented in this appeal. After carefully reviewing the reapportionment decisions of this Court, the Missouri Supreme Court *en banc*, in a six-to-one decision, properly held that Section 178.820 of the Missouri Revised Statutes was valid under the Fourteenth Amendment to the United States Constitution. The court concluded:

> "We thus hold that the one man, one vote principle does not properly apply to such a body as the defendant district; we further hold that §§ 178.820 and 178.840 are valid both under the 14th Amendment to the United States Constitution and under § 2 of Art. I of the Missouri Constitution. In this view it is immaterial whether the trustees are elected on the basis of population or 'school enumeration.' We may note here, however, that the yearly school enumeration does, in all probability, furnish a more accurate guide than does an outdated federal census. We also note, though the matter is not decisive here, the elasticity allowed in § 178.820 to the larger local districts in the election of trustees. The Kansas City District with 59.49% of the school enumeration elects three trustees; if the enumeration exceeds 66-2/3% it will elect four. This method is a far cry from the malapportionments shown in the decided cases." (R. 56, J.S. 12a-13a.)

1. Appellee The Junior College District of Metropolitan Kansas City, Missouri is essentially an administrative body created under State statutes by the Missouri legislature for the sole and special purpose of conducting a two-year junior college; it has no substantial legislative functions and is not a unit of local government "having general governmental powers over the entire geographic

area served by the body." *Avery* v. *Midland County*, 390 U.S. 474, 485 (1968). Accordingly, the "one man, one vote" principle is not applicable, and there is no violation of equal protection under the reasonable percentage formula in § 178.820 for electing junior college trustees, based upon school enumeration.

As readily reflected by the statutory scheme summarized in the Statement above, and notwithstanding a junior college district's powers which appellants emphasize (J.S. 7), it is altogether clear that a Missouri junior college district is not a Texas Commissioner's Court as was involved in *Avery;* it is not "a unit of local government with general responsibility and power for local affairs." *Avery* v. *Midland County, supra*, at 483.[2]

Rather, a Missouri junior college district is more akin to a Kent County, Michigan Board of Education, the Board

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2. Contrast the organizational and operational limitations of a Missouri junior college district, as summarized in the Statement above, with the description of the Midland County, Texas Commissioners Court as set forth in *Avery*:

> "The Commissioners Court is assigned by the Texas Constitution and by various statutory enactments with a variety of functions. According to the commentary to Vernon's Texas Statutes, the court:
>
> 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'
>
> The court is also authorized, among other responsibilities, to build and run a hospital, Tex. Rev. Civ. Stat. Ann., Art. 4492 (1966), an airport, *id.*, Art. 2351 (1964), and libraries, *id.*, Art. 1677 (1962). It fixes boundaries of school districts within the county, *id.*, Art. 2766 (1965), may establish a regional public housing authority, *id.*, Art. 1269k, § 23a (1963), and determines the districts for election of its own members, Tex. Const., Art. V, § 18." *Avery* v. *Midland County, supra*, at 476-477.

that, as this Court described it, "performs essentially administrative functions" which, while important, "are not legislative in the classical sense." *Sailors* v. *Board of Education*, 387 U.S. 105, 110 (1967).[3] Even the one dissenter to the majority opinion below acknowledged that a junior college district "is not primarily a legislative body exercising general governmental functions." (R. 59, J.S. 15a-16a.) Accordingly, as was stated in *Sailors, supra*, at 111, "the principle of 'one man, one vote' has no relevancy," and thus the Missouri statutory formula is not violative of equal protection.

It is true that in *Sailors, supra*, at 109, Mr. Justice Douglas relied in part upon the stated fact that "The

3. Compare the authority of a Missouri junior college district with the actually even broader powers of the Michigan County board of education described in *Sailors* as follows:

> "The authority of the county board includes the appointment of a county school superintendent (Mich. Stat. Ann., § 15.3298(1)(b) (Supp. 1965)), preparation of an annual budget and levy of taxes (Mich. Stat. Ann., § 15.3298(1)(c) (Supp. 1965)), distribution of delinquent taxes (Mich. Stat. Ann., § 15.3298(1)(d) (Supp. 1965)), furnishing consulting or supervisory services to a constituent school district upon request (Mich. Stat. Ann., § 15.3298(1)(g) (Supp. 1965)), conducting cooperative educational programs on behalf of constituent school districts which request such services (Mich. Stat. Ann., § 15.3298(1)(i) (Supp. 1965)), and with other intermediate school districts (Mich. Stat. Ann., § 15.3298(1)(j) (Supp. 1965)), employment of teachers for special educational programs (Mich. Stat. Ann., § 15.3298(1)(h) (Supp. 1965)), and establishing, at the discretion of the Board of Supervisors, a school for children in the juvenile homes (Mich. Stat. Ann., § 15.3298(1)(k) (Supp. 1965)). One of the board's most sensitive functions, and the one giving rise to this litigation, is the power to transfer areas from one school district to another. (Mich. Stat. Ann., § 15.3461 (1959).)" *Sailors* v. *Board of Education*, 387 U.S. at 110, fn. 7.

A Missouri junior college district particularly has no such power as the last enumerated one of the Michigan county board of education because what limited authority a Missouri junior college district has in "pass[ing] on" (J.R. 7) the annexation of another school district is dependent upon voter initiation and approval of the district proposed to be annexed.

Michigan system for selecting members of the county school board is basically appointive rather than elective."[4] But it is important that in referring to *Sailors* in the subsequent *Avery* decision, this Court said that there "The Court rested on the administrative nature of the area school board's functions and the essentially appointive form of the scheme employed." *Avery* v. *Midland County, supra,* at 485. Clearly, therefore, the "administrative nature" of a Missouri junior college district's functions is significant, and the instant appellants' appeal does not present a substantial federal question when, in a *Sailors* and not an *Avery* situation, this Court has already "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations." *Avery* v. *Midland County, supra,* at 485. The decision below is consistent with those of this Court.

2. Furthermore, the statutory percentage formula for electing junior college trustees in Missouri's Section 178.820 is not subject to the "one man, one vote" requirement because the formula is based upon school enumeration and not population.

In *Reynolds* v. *Sims,* 377 U.S. 533, 567 (1964), this Court stated that "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in *legislative* reapportionment controversies." (Emphasis added.) But population need not be the controlling criterion where an essentially non-legislative

4. As explained in *Sailors,* the people of Kent County, Michigan elected the boards of the 39 local school districts, which had vast population differences between them, and then each local board sent one delegate to the county meeting where five members of the county board of education were chosen, with each delegate voting once regardless of the size of his district. *Sailors* v. *Board of Education,* 254 F.Supp. 17, 18-19 (W.D. Mich.), *aff'd* 387 U.S. 105.

administrative body such as a junior college district is involved. Indeed, the Missouri system for allocation of trustees among the component school districts in a junior college district is expressly based upon school enumeration, and not population. School enumeration is an important and vital element in the operation and management of the Missouri public school system. As already noted, see footnote 1, *supra*, Section 167.011 of the Missouri Revised Statutes requires each school district to take an enumeration of all persons therein between the ages of six and twenty years on an annual basis, prior to May 15 of each school year, with certain exceptions. School enumeration is the basis on which county school funds are apportioned among the school districts within a county. R.S.Mo. (1967 Supp.), § 166.161. Accordingly, it was altogether reasonable for the Missouri legislature to make school enumeration, rather than population, the basis for the statutory formula in electing junior college trustees, an administrative group with a special-purpose function. As stated in *Sailors, supra*, at 110-111:

> "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation."

And again in *Avery, supra*, at 485:

> "This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems."

Thus, how can there be any constitutional objection to the State of Missouri making school enumeration its criterion in electing junior college district trustees?

As to the percentage aspect of the Missouri formula, there can likewise be no valid objection. The percentage groupings might not achieve mathematical perfection in all cases when there are only six members of the board to be elected from the total area and when the formula is also related to the boundary lines of the component school districts. *Cf. Dusch* v. *Davis*, 387 U.S. 112 (1967), where, as stated in *Avery, supra,* at 485, this Court "permitted Virginia Beach to choose its legislative body by a scheme that included at-large voting for candidates, some of whom had to be residents of particular districts, even though the residence districts varied widely in population." But, again, there is a rational basis for the Missouri legislature doing what it did as to a special-purpose junior college district. The percentage aspect of the election method encourages individual school districts to join together to form a junior college district—without their being swallowed up and losing all trustee representation to the larger school districts—and promotes the growth and development of the junior college system. Straight elections at large, as advocated by appellants, would do the opposite. See *Dusch* v. *Davis, supra,* at 117:

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the modern megalopolis in relation to the city, the suburbia, and the rural countryside."

Despite appellants' assertions to the contrary, with the special-purpose nature of a junior college district, there is certainly nothing invidious or arbitrary about Missouri's statutory percentage formula, notwithstanding

some variance from absolute mathematical norms. "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invidious." *Avery* v. *Midland County, supra,* at 484. A fallacy in appellants' argument here is that they tend to equate the term "school enumeration" with "population" and/or "voters." They argue that because the school enumeration of the Kansas City School District is larger than that of the other component school districts within the junior college district, the voters of the Kansas City School District are discriminated against in only being able to elect one-half of the six trustees. Appellees submit that there is no necessary connection or absolute mathematical relationship between the number of persons of student age in a school district and the number of people or voters in the same school district. The Missouri statute allocating junior college trustees on the basis of certain school enumeration percentages could not alone be held unconstitutional on the basis that the *voters* in one district are discriminated against, even assuming *arguendo* that the "one man, one vote" principle is applicable to school districts under certain circumstances.

In the final analysis, all that the appellee junior college district does is operate one school, and certainly its trustees, while elected, are not general representatives of the people. Beyond this, the powers of the district are limited, the voters being granted important authority as is the State Board of Education. If this Court would apply the "one man, one vote" rule to such special-purpose units with essentially administrative functions, a chaotic situation would follow and ensuing litigation would likely be endless.

CONCLUSION

For the foregoing reasons, it is submitted that the Missouri legislature was well within its discretion in providing for apportionment of junior college trustees under a percentage formula based on the school enumeration of the component school districts. Appellees accordingly urge that no substantial federal question has been presented and that the appeal from the decision below of the Missouri Supreme Court should be dismissed.

Respectfully submitted,

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February 3, 1969

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER, and GWENDOLYN M. WELLS,
Appellants,

VS.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of the Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON,
Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

MOTION TO DISMISS OR AFFIRM

Appellee, Attorney General of Missouri, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves the court to dismiss this appeal or to affirm

the decree of the Missouri Supreme Court for the reason that the decision of the Supreme Court is plain and correct that a substantial federal question is not presented and that plenary consideration is not warranted.

STATEMENT

We consider the jurisdictional factual statements by the appellants to be sufficient, and we will not restate them in this brief.

ARGUMENT

The decision of the Missouri Supreme Court is plainly correct. The questions presented have been previously ruled upon by this court and do not merit plenary consideration.

The appellants contend that the equal representation doctrine applies to trustees of junior college districts of Missouri which are elected from component public school districts. The Missouri Supreme Court held that the equal representation doctrine did not apply to Missouri junior college districts and that Sections 178.820 and 178.840, RSMo Supp. 1967 (Missouri Junior College District Law) were valid under both the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Missouri Constitution. The court stated (Appendix 1, appellants' Jurisdictional Statement, p. 12a):

> "* * * We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is **not** a 'unit of local government having general governmental powers over the entire geographic area served by the body.' Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54. * * *"

In **Sailors, et al. v. Board of Education of the County of Kent, et al.**, 387 U.S. 105. This court refused to apply the equal representation doctrine to a county board of education stating that the board "performs essentially administrative functions; and while they are important, they are not legislative in the classical sense." (l.c. 110) Factually there was gross inequality in representation in the **Sailors** case. Respective sizes and representation of the school districts in the **Sailors** case are set forth in the District Court's opinion (254 F.Supp. 17). The relative voting power between the largest district and all the other districts was about 200 to 1.

Appellants assert that this court's holding in **Sailors** is based upon the fact that the members of the county school board were appointed rather than elected. We are of the view that the decisive factor in the **Sailors** case is the nonlegislative character of the county school board.

It is more reasonable to apply or not apply the equal representation doctrine on the basis of the governmental functions of the political entity involved than to apply or not apply the doctrine based upon the procedures of selecting the representatives. The contrary would give greater weight to form than to substance assuming that the equal representation rule applied to school districts, if the Missouri statutes provided that junior college district trustees would be elected by the directors of the component school district rather than the voters of the junior college district, then the facts here would be identical to the facts in **Sailors** and the Missouri Junior College District Law would be constitutional. In short, it would be possible to evade the constitutional equal representation requirements by merely providing a two-step system of election.

We interpret the **Sailors'** decision to be based upon a more fundamental distinction. Namely, the character of the

political entity and not the procedures of selection. This interpretation is supported by this court's decision in **Avery v. Midland County, Texas, et al.**, 390 U.S. 474.

In **Avery** this court applied the equal representation doctrine to the Commissioners Court of Midland County, Texas. The court stated l.c. 484, 485:

> "* * * We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having **general governmental powers** over the entire geographic area served by the body." (Emphasis added)

Immediately following this holding this court distinguished the **Sailors** case from the **Avery** case.

With these rules in mind let us look at the powers and functions of Missouri junior college districts. They are set out in Chapter 178, RSMo Supp. 1967 as follows:

The district is a body corporate and subdivision of the State of Missouri. Section 178.779.

Establishment: After initiation by petition and approval of the State Board of Education, the establishment of a junior college district at all times coextensive with the boundaries of the public school districts within the junior college district. These are referred to as component school districts. Section 178.790.

Selection of Trustees: Six trustees are elected by popular vote to operate the district. Trustees are elected at-large or from component school districts based upon relative school enumeration, Section 178.020.

Tax levies in excess of the base levy authorized by Section 178.870 require voter approval.

The issuance of bonds also requires voter approval. Section 164.121, RSMo Supp. 1967.

The board of trustees have the following powers and functions:

1. To sue and be sued. Section 178.770, Subsection 2.

2. To levy and collect taxes. Section 178.770, Subsection 2, Section 178.870.

3. To issue bonds after voter authorization. Section 178.770, Subsection 2.

4. To provide instruction (principally at the college level). Section 178.850.

5. To employ teachers and other necessary personnel and to fix their duties and compensation. Section 178.860.

6. To pass upon petitions for annexation. Section 178.890.

7. To acquire property by condemnation. Section 177.041.

8. To hold title to and exercise control over all property of the district and to provide for its maintenance. Sections 177.011 and 177.031.

9. To make rules and govern the school and its pupils. Sections 167.161 and 171.011.

From these statutes it is evident that junior college districts do not have "general governmental powers over the entire geographic area served by the body." Cities, town and counties have quasi sovereignty. They have law-making powers. They have judicial powers. They exercise police power by licensing and regulating businesses and persons in the interest of the public health and welfare. Such municipal corporations provide common services such as fire protection, police protection, streets, sewers, utilities, etc. A junior college district does not have any of these general powers to govern or serve the public. It is a special

purpose district which exists to provide a very important but nonetheless special purpose. It exists to educate, not to govern.

The cases cited by appellants which have applied the equal representation doctrine to school districts were all decided prior to this court's decision in **Sailors. Meyer, et al. v. Board of Education of Carroll County,** Iowa, 152 N.W.2d 617, was decided shortly after the **Sailors'** decision but prior to **Avery.** All of these cases failed to make any distinction between political entities with general governing powers and those with limited special powers.

Missouri junior college districts are special purpose districts without general governing powers. Accordingly, the doctrine of equal representation does not apply to the trustees of such districts.

CONCLUSION

Appellee, Attorney General of Missouri, submits that the equal representation doctrine is not applicable to trustees of Missouri junior college districts, that the decision of the Missouri Supreme Court so holding is plainly correct in accord with previous rulings of this court. Accordingly, this case does not merit plenary consideration.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER, and GWENDOLYN M. WELLS,
Appellants,

VS.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN P. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLANTS

OPINION BELOW

The opinion, judgment and decree of the Supreme Court of Missouri is reported in 432 S.W.2d 328.

A copy of the majority opinion and judgment is found at A. 25-37. The dissenting opinion of Judge Seiler is found at A. 37-51.

JURISDICTION

This is a junior college redistricting case, involving the constitutionality of part of §178.820, R.S.Mo. (Cum. Supp., 1967), V.A.M.S. This proceeding is brought pursuant to 28 U.S.C., Section 2101 (c). The date of the judgment sought to be reviewed and the date of its entry is September 9, 1968. The order denying a rehearing is dated October 14, 1968. The notice of appeal was filed November 14, 1968 in the Supreme Court of Missouri. The statutory provision believed to confer on this court jurisdiction of this appeal is 28 U.S.C., Section 1257(2) since the validity of a state statute is in question on the ground of its being repugnant to the Constitution of the United States, and the decision of the Supreme Court of Missouri was in favor of its validity. The cases sustaining the jurisdiction on direct appeal are *Bantam Books, Inc.* v. *Sullivan,* (R.I. 1963) 83 S.Ct. 631, 372 U.S. 58, 9 L.Ed.2d 584, and *Winters* v. *People of State of N. Y.,* N.Y. 1948, 68 S.Ct. 665, 333 U.S. 507, 92 L.Ed. 840. The appeal was docketed in this Court on January 13, 1969 and probable jurisdiction was noted on March 3, 1969.

THE QUESTION PRESENTED

Whether those portions of §178.820-1, R.S.Mo. (Cum. Supp., 1967), V.A.M.S., which under certain circumstances establish a formula for election of trustees from component school districts within a junior college district (rather than at large within the entire district) are unconstitutional under the equal protection clause of the Fourteenth Amendment to the United States Constitution, as a denial of the "one-man, one-vote" principle.

STATUTE INVOLVED

The validity of §178.820-1, R.S.Mo. (Cum.Supp., 1967), V.A.M.S., is involved and it is set out herein verbatim as follows:

"In the organization election six trustees shall be elected at large [except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district]. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. [If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years.] The period of time between the date of the organization election and the date of the first regular election of the junior college district is consid-

ered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each." (Brackets added).

Only the bracketed portions of the statute, providing for election of trustees from component school districts under certain enumeration ratios, are attacked as unconstitutional. The statutory provisions for at large elections are not in question. The statute's official publication is Page 325, §13-84 of the Missouri Laws, 1963. It may also be found in Volume 11A, Vernon's Annotated Missouri Statutes, Page 353, as §178.820.

STATEMENT OF THE CASE

Appellants are four citizens and taxpayers of the Kansas City School District and of the appellee junior college district, one of them being a trustee of the district. Defendants are the junior college district, its other trustees and secretary, and the attorney general of Missouri. Appellants seek to apply the "one man-one vote" principle to the election of all trustees of the district.

The federal questions sought to be reviewed were first raised in the Circuit Court of Jackson County, Missouri, by the appellants' first amended petition (A. 3-14) in which they allege that the statutory formula for the election of trustees from subdistricts is unconstitutional and violates their rights under the equal protection clause of the Fourteenth Amendment to the United States Constitution. The question was passed on by the court by its sustaining defendants' (appellees') motion to dismiss and entertaining a final judgment of dismissal with prejudice (A. 15). The questions presented were then raised in the Supreme Court of Missouri by the agreed Stipulation and Statement of the Case filed under Missouri Supreme Court Rule 82.13 (A. 16-23), and by inclusion in appellants' Points and Author-

ities presented to the Missouri Supreme Court. That court specifically considered the constitutional question and held that the statute was valid under the Fourteenth Amendment to the United States Constitution (A. 24) (R. 56).

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the laws of the State of Missouri and specifically under the provisions of R.S.Mo. 178.770 through 178.890 (A. 17).

The geographical boundaries of the district include parts of Jackson, Clay, Cass and Platte counties for a total of 400 square miles. Since its organization, the Junior College District has maintained a junior college offering courses to all students enrolled therein. The district comprises Kansas City School District No. 33, Center School District No. 58, Consolidated School District No. 1 (Hickman Mills), Consolidated School District No. 2 (Raytown), Consolidated School District No. 4 (Grandview), Reorganized School District No. 7 (Lee's Summit), North Kansas City School District No. 74, and Belton School District No. 124 (A. 17-18).

The phrase "school enumeration" as used in R.S.Mo. 178.820 means an enumeration of all persons between the ages of 6 and 20 years, resident within each component school district (R.S.Mo. 167.011). Section 178.820 of the Revised Statutes of Missouri provides that if there are in a junior college district one or more school districts with more than 33-1/3% and not more than 50% of the total school enumeration of the junior college district as determined by the last school enumeration, then the voters of each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the district. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration

of the junior college district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the junior college district. If any school district has more than 66-2/3% of the total school enumeration of the district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the junior college district (A. 18).

The table on the second page of Judge Seiler's dissenting opinion (A. 38) sets out the enumeration figures for the district for the years 1963-64 through 1966-67 and shows that although Kansas City School District No. 33 has had from 59.49% to 63.55% of the total school enumeration of the district, it has received only 50% of the board representation. The following table in the dissenting opinion (A. 38) sets out the figures for all nine of the Missouri junior college districts and, except for the three in which trustees are elected at large, reflects the large disparity between the percent of enumeration of the large component districts and their actual percentage of representation on the boards of trustees.

Appellants contend that the statutory formula, facial and in fact, discriminates against the voters in the larger component school districts and results in malapportionment of all six of the state junior college districts in which the trustees are elected under the statutory formula.

A junior college district has the power to sue and be sued, to levy and collect taxes within the limitations of §§178.770-178.890, V.A.M.S., to issue bonds and exercise the same corporate powers as common and six-director school districts, other than urban districts, except as otherwise provided by law, §178.770; to provide instruction, classes, school or schools, determine per capita cost of col-

lege courses, collect approved nonresident tuition fees and charges to resident pupils, §178.850; to conduct hearings and suspend or expel pupils on disciplinary charges, §167.161; to make rules and regulations for the organization, grading and government of the district, §171.011; to let contracts, employ and dismiss teachers and approve bills, §178.830; to appoint employees and define and assign their powers and duties and fix their compensation, §178.860; to pass on annexation of school districts to the junior college district, §162.441, and to acquire real property by condemnation, §177.041 (A. 40).

ARGUMENT

I

Equal Population Principle Applies to School Districts. A. Prior Applications of Doctrine.

This Court has applied the "one man, one vote" principle to Congressional Districts in *Wesberry* v. *Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), to state legislatures in *Reynolds* v. *Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and companion cases, and to county governing bodies in *Avery* v. *Midland County, Texas*, 390 U.S. 474, 20 L.Ed.2d 45, 88 S.Ct. 1114 (1968).

Other distinguished courts have applied the doctrine to city councils, including the Supreme Court of Missouri, in *Armentrout* v. *Schooler*, (Mo.Sup.) (1966), 409 S.W.2d 138, and *Ellis* v. *Mayor and City Council of Baltimore*, 352 F.2d 123 (1965) (C.A. 4).

Other courts have applied the doctrine to school districts, *Meyer et al.* v. *Board of Education of Carroll County*, (Iowa Sup. Ct.) (1967) 152 N.W.2d 617; *Strickland* v. *Burns*, 256 F.Supp. 824 (1966) (D.C. Tenn.); *Delozier et al.* v. *Tyrone Area School Board*, 247 F.Supp. 30 (D.C. Penn.) (1965), and *Pitts* v. *Kunsman*, 251 F.Supp. 962, 964-5.

B. Government of Schools Is a Matter of Major National Concern.

As Chief Justice Warren stated in *Brown* v. *Topeka Board of Education*, 74 S.Ct. 686, 691, 347 U.S 483, "Today education is perhaps the most important function of state and local governments". The statement made in 1954 in the context of racial integration of schools has even greater validity today. Among our major governmental domestic concerns is the conducting of the business of educating our young. A time honored and uniquely American concept holds that the public school system and the education of all our citizens are the responsibility of the entire community. Accordingly the tax burden of school support is that of the general citizenry, which also is commonly the electorate for decisions affecting schools. It would therefore seem that the principle of electoral democracy and equality should have one of its most important applications in local school matters. The importance of education in a democratic society was well stated by U. S. District Judge Weinstein in his dissenting opinion in *Kramer* v. *Union Free School District*, 282 F.Supp. 70, 76:

> "An educational system constitutes a modern society's crucial genes. By shaping the minds and attitudes of the young, it determines their individual and collective future. Only through excellent schools and teachers can a democracy such as ours achieve the equality of opportunity and the informed electorate vital to its existence. In this country, the concern with education manifests itself in large sums of public and private money expended, in strong feelings of our citizens about current educational issues, and in studied attempts to preserve local control.
>
> Last year the total expenditure on education in United States public and private schools was over fifty billion dollars, about seven percent of our gross national product. Approximately thirty billion dollars was spent

for primary and secondary education in public schools. When the time of enrolled students, who number almost sixty million, is considered, education is clearly the predominant constructive activity of this nation.

Headlines daily furnish examples of the deep passions stirred by debate on control of educational policy. One of the substantial pressures on peaceful race relations has come from the problems created by integration of schools. In the North as well as the South, people have at times abandoned the ballot and the courts and taken to the streets in an attempt to settle these problems. The right to vote in school board elections is the right to participate in attempts at controlling deep currents in our society which can nurture or destroy."

As Judge Weinstein points out, the denial of the franchise in school board elections affects decisions as to the expenditure of the major portion of local government funds and much of state and federal funds, denies a voice in administration of broad educational programs affecting all citizens and precludes participation in decisions determining in a large measure the character and quality of the community.

C. Broad Governmental Powers of School Trustees.

The recent rash of student disorders has brought legal consideration of the scope and range of the legislative, judicial and executive powers of state colleges and universities. College trustees legislate to a large degree in adopting regulations governing standards of student conduct and establishing procedural rules for conducting hearings where students are charged with violations of school regulations. Certainly as to its students a school has all powers of a general governmental character.

The Missouri legislature is vested with the duty under Section 1, Article IX of the Missouri Constitution to provide for public education. Pursuant thereto it has by stat-

ute authorized the formation of junior college districts, as "bodies corporate and subdivisions of the state" (V.A.M.S., §178.770), with power to levy and collect taxes, issue bonds, hold elections, and with broad powers to govern the affairs of the district, for the purpose of carrying out state governmental functions. In the exercise of that duty the legislature has elected to delegate the power to perform those responsibilities to boards of trustees to be elected by the people in the junior college district.

Under the laws of Missouri (V.A.M.S., Chapter 178) the trustees of a junior college district exercise legislative and administrative functions, including levying of taxes, preparation of an annual budget, establishing of rules and regulations for the government of the district and otherwise functioning as the legislative and policy making body of the district.

The board of trustees has broad legislative powers as to the affairs of the district. It makes major policy decisions, hires and fires large numbers of personnel, has the authority to acquire land by condemnation or purchase, to levy and collect taxes, to issue bonds, to hold elections, to adopt regulations and rules for the operation of the district, to discipline students, to establish standards and fees for admission, to engage in extensive expenditure of public funds. It is independent of municipal control of any city in which it is physically located, is not subject to city zoning laws and has the authority to maintain its own police and fire protection, as well as other functions comparable to a municipal government.

D. "Legislative-Administrative" Distinction Is Invalid.

In *Meyer* v. *Board of Education*, supra, the Supreme Court of Iowa on August 31, 1967 held that where the members of the County Board of Education were elected from

districts, the 14th Amendment of the U.S. Constitution and the "Bill of Rights" of the Iowa Constitution required that the districts be of substantially equal population. The statutory method of selection provided for division of the county into four election districts as nearly as possible of equal territorial size, with one member to be elected by the electors of each district and one member to be elected at large. The evidence was that the districts varied substantially in population. The decision was rendered after the U.S. Supreme Court ruling in *Sailors* v. *Board of Education*, infra, and points out that the U.S. Supreme Court did not pass on the question involved where the legislature has provided for election (rather than appointment) of the county board. The court said:

> "From this observation it is reasonable to believe that where the legislature chooses to submit the selection of an official or board to the electorate, it is of no conquence whether its functions affecting the personal and property rights of the people are administrative or legislative. In either case, those affected should be and are entitled to equal protection of the law. In such cases it seems the 'well developed and familiar' (Baker v. Carr, supra, 369 U.S. 186, 226, 82 S. Ct. 691, 7 L. Ed. 2d 663) judicial standards of the equality clause are applicable to determine whether a state has discriminatorily denied or diluted a citizen's right to exercise the elective franchise."
>
> * * *
>
> "Where the election of those members is required, and where as here the legislature provides for the election of these representatives of the people whether their function be considered legislative, quasi-legislative, or primarily administrative, their election must be made on a population basis, not upon area."

To hold that the equal protection principle of "one person, one vote" applies to a county board of supervisors,

while attempting to distinguish a school district as a governmental agency of special or limited power and jurisdiction, or to argue that since some of the functions of school boards are administrative and quasi-judicial and not exclusively legislative in character and that therefore equal protection should not apply, is to engage in technical distinctions having little meaningful significance. As District Judge Miller stated in his concurring opinion in *Strickland* v. *Burns*, 256 F.Supp. 836, a 2-1 decision applying one man-one vote principles to the Rutherford County School Commission of Tennessee:

> "It is fruitless, in my view, to pursue the elusive distinction between legislative and administrative functions. Many attempts have been made to draw the distinction in varied contexts. But whatever value the dichotomy may have for some purposes to rationalize a particular result, I am convinced that it is inapposite here. So long as a subordinate body is vested with significant and important powers of government, whether they be labeled legislative, or administrative, or both, I can see no reason why it should be permissible under the equal protection clause for a state arbitrarily to debase the value of one person's vote in favor of another. I think that the powers and duties vested by state law in the Rutherford County School Commission are both significant and important. If the General Assembly of Tennessee sees fit to provide that the membership of such a body shall be chosen by popular vote, invidious discriminations between voters should be condemned under the 'one man, one vote' rule."

E. The Special District Analogy Is Not Applicable.

It has been argued that school districts fall within the category of "special" districts and that such special districts are not subject to the strictures of the Fourteenth Amendment in the selection of their governing bodies.

A school district is not what is commonly considered as a special district, sometimes called "special purpose", "special benefit" or "special assessment" districts. The special district commonly has three characteristics.

(1) It is considered as benefiting only a limited or special group.

(2) The taxing power of the district is directed only toward that special group.

(3) The specially affected group composes the limited electorate for the purpose of electing the governing body.

As illustrations, two Missouri statutes establish such districts. §249.770, R.S.Mo., establishes sewer districts in Class Two Counties. In the election of supervisors only owners of property in the district are entitled to vote. §245.060, R.S.Mo., provides for the election of supervisors of a levee district and gives only landowners in the district the right to vote, each owner having one vote for each acre of land owned in the district. In each of these special benefit districts clearly the direct benefit of the improvement (sewer or levee) accrues only to the landowners, who are also the only persons specially assessed for the improvement.

Clearly no such situation here exists. This Court is not being asked to consider whether a limited electorate is proper. All voters resident in the junior college district may vote, and all persons within the district are subject to taxation for the financing of the district.

Appellees cannot argue that the voters of suburban or small school districts are more affected by the performance of the functions of a junior college than are dwellers of the inner city, or of large school districts. The Court is therefore not confronted with the question as to whether a

special unit of government whose functions affect definable groups of constituents more than other constituents may be apportioned so as to give greater influence to the citizens most affected by the organization's function.

Concern has been expressed about the problems of reapportioning the thousands of fire, sewer, water and drainage districts in this country. As a practical matter almost all such districts elect their trustees or commissioners at large. As a legal matter, we see no reason why the democratic doctrine of equal representation should not apply to all levels of government in which governmental officials are popularly elected by voters from election districts. The right is that of a voter to have his vote for a particular public office counted equally with all other voters voting for the same office. The language of the Fourteenth Amendment guaranteeing equal protection of the laws does not spell out any exceptions to the fundamental concept in a democracy that each voter shall have one vote, weighted equally with all other votes, and the majority decision will govern. It is unsound to say that a popularly elected board does not represent the interests of the electorate. The character of the problems facing a school board may vary from those facing a state legislature, but the representative character of its selection, and its responsibility to the electorate is the same.

The majority opinion of the Supreme Court of Missouri cites (A. 35) the article by then Professor Jack B. Weinstein in 65 Columbia Law Review 21, for the position that the author would not apply the "one-man, one-vote" doctrine to special purpose units of local government. The Court then assumes that Professor Weinstein would include school districts within that category. In *Kramer* v. *Union Free School District*, 282 F.Supp. 70, Professor Weinstein (now District Judge Weinstein) in his dissenting opinion

beginning at p. 75 and with particular reference at pp. 76 through 78, makes it quite clear that he views school districts in the category of governmental bodies which *are* subject to the mandate of the Fourteenth Amendment. The issue in *Kramer* was not the same as in the instant case since there the issue involved the right of the legislature to fix voter qualifications. In the instant case the statute recognizes the right of all voters to participate but weights their votes by a discriminatory statutory formula. Nevertheless, Judge Weinstein's thorough opinion makes it clear that on the "gateway" issue as to the applicability of the Fourteenth Amendment he views the mandate as encompassing school districts.

F. The Decision in Avery Governs, Rather Than That in Sailors.

This court, in *Avery* v. *Midland County, Texas*, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968), although dealing with the election of county commissioners, suggests that voting for school boards falls within the ambit of its decision when it said "If voters residing in oversize districts are denied their constitutional right to participate in the election of state senators, precisely the same type of deprivation occurs when the members of a city council, school board or county governing board are elected from districts of substantially unequal population".

Confusion however exists because of the dicta of this court in *Sailors* v. *Board of Education*, 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650. The majority opinion of the Supreme Court of Missouri in the instant case relied on *Sailors* for the proposition that the "one man, one vote" doctrine does not apply to governmental agencies which perform "essentially administrative functions" which are not legislative "in the classical sense". On the other hand the dissenting opinion of Judge Seiler points out that the

issue was not presented by the facts of that case, Justice Douglas pointing out that the Michigan system of selecting members of the county school board is basically appointive rather than elective.

The Supreme Court of Iowa in *Meyer* v. *Board of Education*, 152 N.W.2d 617, rendered after this court's ruling in *Sailors*, viewed this court's action in *Sailors* as not passing on the Iowa question, where the legislature (as in the instant case) provided for the *election* of the county board of education.

It appears to appellants that *Sailors* merely suggests that the extent of the legislative powers of a governmental agency may be a factor in determining whether an election is required, but that if the statute (as here) specifically provides for an election in which all members of the electorate may vote, then the votes of all voters shall be equally weighted as closely as practicable. In view of this court's holding in *Avery*, it seems that the "legislative-administrative" distinction relied upon by the Supreme Court of Missouri is not tenable.

G. No Analogy to Sailors Facts.

The statute enabling junior college districts provides for them to be established by combining a group of school districts, which we refer to as the "component school districts". However, other than their significance as a logical or convenience grouping of adjacent school districts, the component school districts, as such, play no role in the operation of the junior college district.

The statutory provision for election of trustees adopts the existing component school districts as convenient units for structuring election districts for the election of trustees. The school districts themselves however have no function within the junior college district. The school district lines

merely become the basis for election district lines, the large school district (over 1/3, 1/2 or 2/3 of total enumeration) becoming one election district and the smaller districts being combined to form a second election district from which junior college trustees must then be elected.

It is not the school districts, but all the voters within the districts who are the electorate for selection of junior college trustees. The trustees or directors of the component school districts have no role or responsibility whatsoever in the affairs of the junior college district. Thus, the factual situation is totally different and distinguishable from the situation in *Sailors*. There the school board members of each local school district designated one board member to attend a meeting at which county school board members were selected. Here there is no such situation, in that neither the local school districts nor their trustees have any role whatsoever in the junior college trustee elections.

II

Missouri Junior College Statutes Violate "One Man, One Vote" Principle.

A. Statutes Produce Facial and Actual Malapportionment.

(1) Statutory formula compels discrimination between voters.

The stipulated facts present a classical reapportionment issue in a relatively clear cut and simple situation.

The pertinent statutes establishing the procedure for election of junior college board members (V.A.M.S., §§ 178.820 and 178.840) are almost a text book example of malapportionment by statutory formula. The formula, limiting the representation of the large school districts, automatically compels under-representation of the voters in the large districts and over-representation of the voters in the small districts. The only question in each case is

as to the extent of the under-representation produced by the formula. The table will illustrate:

Enum. of Dist.	No. Trustees	% Rep.	Max. % Enum.	Max. Malapp.
1/3 but under 1/2	2	33.3%	49+%	2 to 1
1/2 but under 2/3	3	50.0%	66+%	2 to 1
2/3 or over	4	66.7%	99+%	1 to Infinity

Under the formula the discriminatory ratio may be as much as 2 to 1 and if a large component district has over two-thirds of the total enumeration the variance has no theoretical limit. For example, a large school district might have 90% of the total district enumeration. Its voters would elect 4 trustees. The remaining voters, from school districts having 10% of the total enumeration would elect 2 directors. Thus, the malapportionment in favor of the voters of the small school districts would be 4-1/2 to 1.

(2) Statute has produced actual malapportionment, as applied.

As shown by the table of representation in all Missouri junior college districts (R. 14 and R. 23) the actual malapportionment, in five of the six districts to which the formula applies, ranges close to the maximum theoretically possible under the discriminatory formula. The result is real not just theoretical under-representation.

Converting the statistics of the table into conventional ratios commonly used for comparison in reapportionment matters we arrive at the following figures:

District	Variance from Norm.	Ratio of Representation
St. Louis-St. Louis Co.	37.1%	1 to 1.68
Jasper Co.	46.4%	1 to 1.92
Three Rivers	11.4%	1 to 1.18
Sedalia	28.9%	1 to 1.81
Mo. Western	20.2%	1 to 2.02
Kansas City	27.1%	1 to 1.75

The variance from the normal is that of the representation in the large component school district in each case and is obtained by dividing its percentage of actual representation (i.e. percentage of directors) into its percentage of total enumeration. Ratio of representation is the ratio of representation in the large component district as against that in the small component districts and is computed by dividing the enumeration per director in the large component district by the enumeration per director in the small component districts. Thus in Missouri-Western Junior College District the St. Joseph School District has 80% of the enumeration and its voters elect four trustees, as against the two trustees elected from the remainder of the district with 20% of total enumeration, an actual malapportionment of 2 to 1.

(3) The statutory formula always favors the voters in the small component districts.

As shown by the table (R. 14 and R. 23) the actual discrimination in each case is against the voter of the large component school district. It can be no other way, under the formula. Significantly the variance may move only in one direction—to the detriment of the larger school districts (usually the urban area) and to the great advantage of the smaller districts (usually suburban). Variances, though small, are automatically suspect and subject to constitutional attack as invidious, where the variance is demonstrated to favor one segment of the population. In *Lucas* v. *Colo. Gen. Assembly*, supra, 12 L.Ed.2d 632, 646, Chief Justice Warren said "disparities from population based representation, though minor, may be cumulative instead of off-setting, where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect". See also *Ellis* v. *Mayor & City Council of Baltimore*, 352 F.2d 123, 129.

B. "Enumeration" As Basis for Allocating Trustees Does Not Evade One Man One Vote Doctrine.

In determining whether the trustees shall be elected at large or from two districts, the statutory formula does not use population, but "school enumeration", which by statutory definition is an enumeration of all persons between the ages of 6 and 20 years resident in the component school districts.

It cannot be argued that the use of "school enumeration", rather than population figures, exempts the election from the "one man, one vote" mandate. The situation is somewhat analogous to that presented where the use of registered voters lists is proposed as a substitute for population figures. One must make one of two assumptions. If school enumeration bears a reasonable and consistent ratio to population figures, throughout the district, then a proper allocation of trustees by school enumeration would conform to the same allocation by population. In effect "school enumeration" is nothing more than an index of population. The requirement of equalizing districts by population is then achieved by the equalization of enumerations, "as nearly equal as practicable".

In *Burns* v. *Richardson*, 384 U.S. 73, 16 L.Ed.2d 376, 86 S.Ct. 1286, this Court considered registered voters figures as a basis for apportionment and held:

> "In view of these considerations we hold that the present apportionment satisfies the Equal Protection Clause only because on this record it was found to have produced a distribution of legislators, not substantially different from that which would have resulted from the use of a permissible population basis."
>
> (and at l.c. 392) "Registered voters was chosen as a reasonable approximation of both citizen and total population."

As stated in *Bannister* v. *Davis*, 263 F.Supp. 202, 207 (1966 D.C. La.):

> "The Fourteenth Amendment allows apportionment plans to use bases other than population but only when population figures are unavailable and the figures employed 'substantially [approximate] * * * that which would have appeared had * * * population been the guide'."

On the other hand, if appellees argue (as they have not) that school enumerations do not parallel population ratios, then the statute fails to meet the mandate of the Fourteenth Amendment because a standard other than population has been employed, without rational justification.

Appellees offered no evidence to indicate what relationship school enumeration has to total population, or whether that ratio varies from school district to school district. Consequently they cannot very well present any rational basis for a deviation which they have not proved to exist.

In either event the statute further fails because of the malapportionment compelled by the statutory formula which favors the voters in the small component districts and discriminates against the voters in any component district having over one-third of the total enumeration of the junior college district. This is true whether enumeration is accepted or not as population-related.

It should be emphasized that the definition of "enumeration" has nothing to do with the qualifications of the electorate. The voters in junior college trustee elections are all those persons qualified to vote, i.e., the entire general electorate of the total junior college district.

C. No Rational Basis for Distinguishing Between Voters of Large and Small Component School Districts.

The statute arbitrarily favors the voters of the small component school districts (those having less than 1/3 the total enumeration of the district). There is no rationale presented or apparent for such blatant favoritism. The component school districts, as such, play no role in the operation or policy of the junior college district. They are merely convenient "electoral" districts. Neither the small school districts nor their voters have any peculiar problems (vis-a-vis junior college education) which justify favoring them over the large districts. The legislature, in its discretion chose to use the component district boundaries as election district lines. This, it may do. However the evil arises not in selecting existing school districts as election districts, but in giving the voters of the small districts over-representation by a statutory formula. Attempts to favor non-urban areas against urban areas by statutory formula have been consistently held not to be constitutionally acceptable as a rational basis for classification. *Reynolds* v. *Sims*, 377 U.S. 533, 562, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964); *Ellis* v. *Mayor & City Council of Baltimore*, 352 F.2d 123, 128; *Davis* v. *Dusch*, 361 F.2d 495, 498.

III

CONCLUSION

Fortunately the relevant statutes (R.S.Mo. 178.820 and 178.840) provide an alternative procedure for election of trustees at large, which comports with constitutional requirements. Consequently the court is not faced with the dilemma of having to require legislative change. It may simply declare the specific portion of § 178.820, which es-

tablishes the component district formula, to be unconstitutional, leaving the balance of the election provisions intact, thereby requiring future elections of trustees at large, unless the Missouri legislature chooses to make statutory changes.

Respectfuly submitted,

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INDEX

351-217—69—1

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, ET AL., APPELLANTS

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, ET AL.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The majority and dissenting opinions of the Supreme Court of Missouri (A. 25–37, 37–51) are reported at 432 S.W. 2d 328. The Circuit Court of Jackson County, Missouri, in which the suit was brought, wrote no opinion (see A. 15–16).

JURISDICTION

The judgment of the Supreme Court of Missouri was entered on September 9, 1968 (A. 24), and a timely petition for a rehearing was denied on October 14, 1968. A notice of appeal was filed on November 14, 1968, and the jurisdictional statement was filed on January 13, 1969. Probable jurisdiction was noted on

March 3, 1969 (393 U.S. 1115). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

Section 178.820 of the Revised Statutes of Missouri provides, in pertinent part, as follows:

> TRUSTEES ELECTED AT LARGE OR FROM COMPONENT DISTRICTS—TERMS—QUALIFICATIONS
>
> 1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed dis-

trict. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

QUESTION PRESENTED

Whether the equal-population principle enunciated in *Reynolds* v. *Sims,* 377 U.S. 533, and related cases, and applied to the local governmental level in *Avery* v. *Midland County,* 390 U.S. 474, extends to the district-based election of members of school boards.

INTEREST OF THE UNITED STATES

The United States has consistently participated as *amicus curiae* in significant cases involving alleged malapportionment, from *Baker* v. *Carr,* 369 U.S. 186, through *Wesberry* v. *Sanders,* 376 U.S. 1, and *Reynolds* v. *Sims,* 377 U.S. 533, to *Avery* v. *Midland County,* 390 U.S. 474. Our role in those cases was

prompted by the importance of the fundamental right sought to be effectuated—the right of each citizen to full, fair and effective participation in the electoral process, at all levels of government, on an equal basis and without regard to where he happens to reside. The instant case at least potentially presents the broad question whether the equal-population principle of *Reynolds,* held applicable to local governing bodies generally in *Avery,* applies as well to school boards whose members are elected from districts. Our participation here thus seems warranted to vindicate the public interest in fair representation on those important bodies of local government.

STATEMENT

Appellants are citizens and taxpayers of the Kansas City, Missouri, school district and of appellee junior college district. They brought suit in the Circuit Court of Jackson County, Missouri, challenging the constitutionality, principally under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, of the method prescribed by Section 178.820 of the Revised Statutes of Missouri for the election of trustees of the Junior College District of Metropolitan Kansas City (see A. 4–11). Appellants sought both declaratory and injunctive relief (see A. 11–13). Appellees, the junior college district, certain officials thereof (including four of its five trustees), and the Attorney General of Missouri, moved to dismiss the action on the ground that the petition failed to state a claim upon which relief could be granted.

Appellee junior college district is one of eleven such junior college districts in Missouri. In six of them the boards of trustees are elected under the statutory formula prescribed in Section 178.820, and in five they are elected at large. The district here involved was organized in 1964 pursuant to a vote of the people, and it comprises the metropolitan area of Kansas City, Missouri, along with certain outlying sections, approximately 400 square miles overall. Contained within this district are eight local school districts, including the Kansas City School District, the "school enumeration"[1] of which, during the past four years, has varied between 59.49 percent and 63.55 percent of the total school enumeration of the entire district. Under the formula prescribed by the statute challenged by appellants, only three of the six trustees

[1] See Mo. Rev. Stat., § 167.011, which requires that "the school board of each district in the state shall cause to be taken * * * an enumeration of all persons between the ages of six and twenty years, resident within the district * * *." Such an enumeration may be taken annually, but is required to be obtained at least once every five years. School enumeration figures, rather than total population figures, were utilized throughout the instant litigation, by both courts and parties, without serious challenge (see A. 18). The figures used here, it should be noted, were for the 1966–67 school year (see A. 23). Absent any showing to the contrary, it is reasonable to assume that these figures bore a consistent relationship to total population figures throughout the area, and that they were not used for any evasive or improper purpose—but rather simply because they were readily available and more current than federal census figures would have been. See, *e.g.*, *Burns* v. *Richardson*, 384 U.S. 73, 90–97; *Ellis* v. *Mayor and City Council of Baltimore*, 352 F.2d 123, 126–130 (C.A. 4); *Hartman* v. *City and County of Denver*, 440 P.2d 778, 781–782 (Colo. Sup. Ct.).

who serve as members of the junior college district's board—or 50 percent—are elected from the Kansas City School District.[2] The powers, functions and duties of junior college districts under Missouri law are prescribed in Sections 178.770 through 178.890 of the Revised Statutes of Missouri. Included among the powers of such junior college districts—which parallel those of other school districts in the State—are the power to sue and be sued, to levy and collect taxes within prescribed statutory limitations, to issue bonds within prescribed statutory restrictions, to administer the junior college system wthin its area, including the hiring and firing of teachers and employees, the letting of contracts, the collection of fees, and the supervision of student discipline, to pass on the annexation of school districts to the junior college district, and to acquire real property by condemnation (see A. 40, n. 1). The basic function of the junior college districts is to supervise the operation of a program of two-year public education at the college level within their respective areas (see Mo. Rev. Stat., § 178.850).

All of the above data was before the circuit court. Appellants contended that the equal-population principle of *Reynolds* was applicable to the election of

[2] Figures for each of the other five junior college districts whose trustees were elected from districts showed similar disparities from population-based representation, all running necessarily against the more populous areas, which is the inevitable effect of the statutory formula (see A. 23). These figures, it might be pointed out, were for the 1963–64 school year (*ibid.*). Under the statutory formula, it might be noted, a component district having in excess of 90 percent of the area's total population would be entitled to elect only four of the six junior college district trustees (see *supra*, p. 2).

junior college district trustees, and that the existing districting scheme, under the statutory formula, invidiously discriminated against residents of the disfavored Kansas City School District. Appellees responded that, even if *Reynolds* did apply to local bodies exercising general governmental powers, it was inapplicable to special-purpose units like school boards which exercised essentially administrative and not legislative powers. On December 2, 1966, the lower court entered an order sustaining appellees' motions to dismiss, and thereafter overruled a motion for rehearing or new trial and entered a final judgment dismissing appellants' petition and cause of action with prejudice (A. 15–16).

Appellants then took an appeal, under stipulated facts, to the Supreme Court of Missouri (see A. 16–23). That court reviewed the various contentions of the parties, and ultimately determined that the lower court had properly dismissed appellants' suit. In substance, the Missouri court concluded that this Court's intervening decision in *Avery* was not controlling because that case involved a "general governing body" of a county exercising both legislative and administrative functions; found that this Court's earlier decision in *Sailors* v. *Board of Education,* 387 U.S. 105, was closely parallel because it involved a school board performing "esssentially administrative functions" and, in the Missouri court's view, did not turn on the non-elective method by which the members of the board there involved were selected; and rejected the holdings and reasoning of a number of lower court cases involving the application of the

equal-population principle to local governing bodies, including several decisions relating to school boards. Relying on the consideration that school districts are special-purpose, single-function units of local government, as distinguished from counties or cities, and postulating that the powers of the junior college district here involved were rather limited in scope, the Missouri court held that the equal-population principle was inapplicable and that the method by which junior college district trustees were elected under the pertinent statute was consistent with the Fourteenth Amendment. Accordingly, it affirmed the judgment below, with one judge dissenting (A. 25–51).

ARGUMENT

INTRODUCTION AND SUMMARY

At the outset, it should be noted that the instant case is somewhat atypical, in that the immediate subject is not the common type of independent school district found throughout the country, operating local elementary and secondary public schools within a specified geographic area. Rather, the responsibility of the unit of government involved here extends only to the administration of a junior college system within a certain part of Missouri. Nonetheless, the powers and functions of the junior college district trustees closely parallel those of school board members generally, and the Missouri arrangement is far from unique.[8] Thus, in our view, the case at least potentially presents the

[8] Some 30 of our States make provision for community or junior college districts (see Appendix, *infra*, pp. 43–44).

broad issue whether the equal-population principle of *Reynolds* and *Avery* applies to the district-based election of school board members generally. It is to that important question—which presumably remains unresolved despite this Court's decision in *Avery*—that we direct the substance of our argument.

In the course of developing that argument, we show first that nothing in this Court's decision in the *Sailors* case, on which the Missouri court here placed extensive reliance, prevents application of the equal-population principle to elected school boards, since the scheme there involved was characterized by this Court as an appointive, not an elective, one (*infra,* pp. 10–13). Next, we point out that lower court decisions, both before and after *Sailors* was decided, have consistently held that the equal-population principle is applicable to elected school boards (*infra,* pp. 13–20). Then, turning to this Court's decision in the *Avery* case, we show that both the holding and opinion there, as well as the underlying rationale, strongly support application of the equal-population principle to elected school boards (*infra,* pp. 21–26). We next direct our attention to the points of distinction relied upon by the Missouri court, and demonstrate that neither the fact that a school board may be thought to exercise essentially administrative as distinguished from legislative powers, nor the fact that school districts are special-purpose, single-function units of local government, makes the rationale of *Reynolds* and *Avery* inapplicable (*infra,* pp. 26–34). Finally, we endeavor to show that weighty considerations of public policy,

as well as sound legal reasons, favor application of the equal-population principle to elected school boards (*infra*, pp. 34–42).

I. NOTHING IN THIS COURT'S DECISION IN THE *SAILORS* CASE PREVENTS APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

Since the court below placed considerable reliance on this Court's decision in *Sailors* in determining that the equal-population principle was inapplicable here, we turn initially to a discussion of that case. As summarized in *Avery*, the *Sailors* decision "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations," because of the "administrative nature of the area school board's functions and the essentially appointive form of the scheme employed" (390 U.S. at 485). In our view, that ruling is not controlling here in light of the essentially different situation presented.

Sailors did not involve a board having general authority over public education within a geographic area. More importantly, there the board was not elected at all, but was selected by delegates from each of the local school boards located within the county (387 U.S. at 109–110, n. 6). In distinguishing *Reynolds* and cases such as *Gray* v. *Sanders*, 372 U.S. 368, and *Wesberry* v. *Sanders*, 376 U.S. 1, the Court in *Sailors* pointed out that "[t]hey were all cases where elections had been provided and cast no light on when a State must provide for the election of local offi-

cials" (387 U.S. at 108). In the *Sailors* opinion the Court further noted that, even were it to "assume *arguendo* that where a State provides for an election of a local official or agency, the requirements of *Gray* v. *Sanders* and *Reynolds* v. *Sims* must be met * * *," that would not resolve the question whether, consistent with the Equal Protection Clause, "Michigan may allow its county school boards to be appointed" (*id.* at 109). Having found the "system for selecting members of the county school board" there involved to be "basically appointive rather than elective," the Court regarded it as unnecessary to decide "whether a State may constitute a local legislative body through the appointive rather than the elective process" (*id.* at 109–110). That was so, the Court stated, since the county school board there involved "performs essentially administrative functions" which "are not legislative in the classical sense" (*id.* at 110). In concluding its opinion in *Sailors,* the Court again reiterated the essence of its narrow holding, stating: "Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy" (*id.* at 111).

Thus, despite the fact that *Sailors,* like the instant case, involved a school board, that decision is inapposite here. *Sailors* holds no more than that the equal-population principle is inapplicable where members of a local governmental body exercising essentially administrative functions are appointed rather than elected. The court below improperly relied on the characterization of the Kent County Board of Educa-

tion as "administrative" as entailing the basic *ratio decidendi*. In fact, that language in the *Sailors* opinion was addressed to the question whether the body there involved could constitutionally be chosen by an appointive instead of elective scheme. It could, the Court concluded, because its functions were basically administrative and not legislative in character—the opinion leaving unresolved the question whether a local legislative body may be constituted through the appointive rather than the elective process. That issue is not presented here, since it is undisputed that junior college district trustees in Missouri are elected, not appointed. The straightforward question here is whether there is anything about school boards in general, or the particular body involved, which exempts them from the equal-population principle of *Reynolds*, as applied to the local level generally in *Avery*. In resolving that issue *Sailors* is simply not helpful,[4] and the Missouri court's conclusion that "the non-

[4] This has been the consistent view of the courts and the commentators that have considered *Sailors*, particularly in view of the later holding in *Avery*. See *Meyer* v. *Campbell*, 152 N.W. 2d 617, 620–623 (Iowa Sup. Ct.) (discussed *infra*, pp. 18–20); cf. *Kramer* v. *Union Free School District No. 15*, 282 F. Supp. 70, 74 (E.D.N.Y.), pending on appeal, No. 258, this Term. See also Dixon, *Local Representation: Constitutional Mandates and Apportionment Options*, 36 Geo. Wash. L. Rev. 693, 698–699 (1968); McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 723–724, 730, 736–737 (1968); Martin, *The Supreme Court and Local Government Reapportionment: The Second Phase*, 21 Baylor L. Rev. 5, 15–16 (1969); Sentell, *Avery v. Midland County: Reapportionment and Local Government Revisited*, 3 Ga. L. Rev. 110, 116 (1968); Comment, 19 S.C.L. Rev. 839, 844–845 (1967); Note, 47 N.C.L. Rev. 413, 416 (1969); Note, 21 Vand. L. Rev. 1104 (1968); Note, 21 Vand. L. Rev. 153 (1967); Note, 22 Sw. L.J. 542 (1968).

legislative character of the board in *Sailors* was the determining factor" (A. 36) does not withstand close analysis of that decision.[5]

II. LOWER COURT DECISIONS, BOTH BEFORE AND AFTER *SAILORS* WAS DECIDED, SUPPORT APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

The lower court in *Sailors* was not the only one to confront the issue whether the equal-population principle of *Reynolds* should be applied to elected school boards. At least two other federal district courts squarely faced that question prior to this Court's decision in *Sailors*,[6] and both resolved it in favor of

[5] The limited relevance of *Sailors*, in view of the distinguishing features there involved, was aptly perceived by the dissent here (see A. 49).

[6] In several other cases the same question was raised but was not reached. See *Pitts* v. *Kunsman*, 251 F. Supp. 962 (E.D. Pa.), which related to the composition of an interim body selected in a manner not dissimilar to the method involved in *Sailors* to operate the public school system during a period of consolidation of small, local school districts. There the court, while assuming the applicability of the equal-population principle to elected school boards as a general matter (see *id.* at 964–965), found that principle inapplicable on the special facts there presented (*ibid.*) and decided the case on State law grounds (*id.* at 966–968), ultimately holding the interim body to be improperly constituted. See also *Elberti* v. *Kunsman*, 254 F. Supp. 870 (E.D. Pa.), involving a virtually identical controversy, where the court found "no federal constitutional infirmity" for the reasons discussed in its opinion in *Pitts* (*id.* at 871), but again found the interim body's composition improper on State law grounds (*id.* at 871–873). *Detroit Edison Co.* v. *East China Township School District No. 3*, 247 F. Supp. 296 (E.D. Mich.), affirmed on other grounds, 378 F. 2d 225 (C.A. 6), certiorari denied, 389 U.S. 932, is inapposite, since it involved only a collateral attack on the composition of a local school board and was decided essentially on grounds which did

the principle's applicability. *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa.); *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.). Since those two decisions predate both *Sailors* and *Avery*, and since only one other court, even since *Avery*, has apparently considered this issue—the Iowa Supreme Court in *Meyer* v. *Campbell*, 152 N.W. 2d 617 (discussed *infra*, pp. 18–20)—*Delozier* and *Strickland*, along with *Meyer*, warrant some detailed consideration.

In *Delozier* the districting scheme for a newly fashioned area school board, resulting from the consolidation of previously separate school districts, was attacked as deviating substantially from the equal-population principle of *Reynolds*. Under that scheme, the geographic area encompassed by the new unit was divided into nine districts, each of which was to elect one representative to serve on the area school board (247 F. Supp. at 32). The largest district had about seven times the population of the smallest (*ibid.*). In concluding that the equal-population principle was not limited to statewide elections of legislative bodies, the district court there rejected the argument that (*id.* at 34)

> * * * the status of a local school district, being an arm or agency of the state legislature

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not require reaching the issue whether *Reynolds* applied to elected school boards, although the district court in dicta indicated that, in its view, it did not (see *id.* at 300–302). Holding that the annexation procedure there directly challenged was not invalid, the Sixth Circuit affirmed, expressing no view on the question of *Reynolds*' applicability (378 F. 2d at 228–230), and certiorari was denied by this Court.

> to administer its educational system makes it immune from the constitutional requirement [of *Reynolds* and *Gray* v. *Sanders*]. * * *

Continuing, the court reasoned that (*id.* at 35)

> [t]he legislature of the State of Pennsylvania has delegated the management of its educational system in local areas to local school boards. These boards, in the class of school district in the present case, and in most other classes, are elected by popular vote. The state has also delegated to such boards the power to levy taxes, and in most communities the various taxes levied by the school boards are the largest local tax imposition. While school boards are subject to numerous limitations in the exercise of local powers, these limitations are no less in scope or variety than the limitations imposed on other governmental subdivisions or municipal corporations. The encroachment of state control and the extent and variety of state financial aid extends to all forms of political subdivisions in the state as well as to school boards.

Noting that the equal-population "principle has been applied to various elective bodies, local, municipal, county and school districts, where that body is elective and exercises legislative powers" (*ibid.*), the district court determined that "the plan of representation [there] adopted * * * violates the mandate of [the] Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States" (*id.* at 36).

In similar fashion, the district court in *Strickland* held that the equal-population principle applied to a

county school board whose members were elected on a district basis. There a Tennessee statute provided for the election of the eleven members of the county school commission from unequally populated school zones, one of which "contain[ed] at least one-third of the county's total population and [was] from three to fifteen times more populous than the other zones" (256 F. Supp. at 825). As noted by the district court, the board's powers "include, *inter alia*, the hiring of teachers and other school employees, regulation of pupil transportation, the approval of an annual school budget and the purchase of supplies and equipment" (*ibid.*). Significantly, the board did not have any power of taxation, as noted by the dissent (*id.* at 836). Nonethless, the court determined that the districting scheme diluted the efficacy of the votes of those residing in the populous areas and deprived them of equal representation on the board. It rejected the contention that "a local representative governmental body which is primarily administrative rather than legislative in character" (*id.* at 825) need not conform to the equal-population principle (*id.* at 827). Concluding that "the rationale of * * * *Reynolds* * * * is logically as applicable to the backwaters of representative government at the local level as to the fountainhead of representative government at the state level" (*id.* at 826), the court reviewed and relied upon a number of other local government apportionment decisions, including *Delozier* (*ibid.*). In holding the existing discrimination "invidious", the district court stated (*id.* at 827):

> Since we can find no basis for applying the "one man, one vote" rule to the congeries of powers possessed by the Legislature itself and at the same time denying its application to a subordinate body simply because it possesses a fractional part of those powers, so long at least as the fractional part cannot be said to be insignificant or unimportant, we * * * hold that the apportionment provisions of the Act complained of are void as violative of rights secured by the Equal Protection Clause of the Fourteenth Amendment.[7]

Thus, the only two reported decisions on the question whether *Reynolds* applied to elected school boards prior to this Court's decision in *Sailors,* aside from the lower court decision in *Sailors* itself (254 F. Supp. 17),[8] held the equal-population principle applicable.

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[7] A concurring opinion noted, almost in anticipation of the Court's holding in *Avery* in this regard, that "[i]t is fruitless * * * to pursue the elusive distinction between legislative and administrative functions," and suggested that "[s]o long as a subordinate body is vested with significant and important powers of government, whether they be labelled legislative, or administrative, or both, [there is] no reason why it should be permissible under the equal protection clause for a state arbitrarily to debase the value of one person's vote in favor of another" (*id.* at 836).

[8] It should be noted that the county school board involved in *Sailors*, as distinguished from those involved in the *Delozier* and *Meyer* cases (but like that in *Strickland*), is not classified as an "independent school district" by the Bureau of the Census. See Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization", p. 371. Such intermediate Michigan school districts are treated for statistical purposes "as joint activities of constituent school districts" (*ibid.*), while the units involved in the Pennsylvania and Iowa cases are regarded as separate units of local govern-

Both *Delozier* and *Strickland*, it might be pointed out, were referred to by this Court with apparent approval in its opinion in *Avery* (see 390 U.S. at 479, nn. 3, 4).

Subsequent to this Court's decision in *Sailors*, but before *Avery* had been decided, the Iowa Supreme Court considered the question whether the equal-population principle was applicable to elected school boards, and concluded that it did apply. *Meyer* v. *Campbell*, 152 N.W. 2d 617. There the body involved was a county school board which exercised general supervision over public education within the entire geographic area. And there a state statute provided for the election of county school board members (except for one member elected at large) from four election areas "as nearly as possible of equal size and contiguous territory" (*id.* at 619). Thus, the voters of each area would elect two members of the board, the one from their election area and the at-large member. One election area contained a considerably larger number of people than the other three, which were roughly equal in population (*ibid.*). Reading *Sailors* as holding simply that the equal-population principle was inapplicable to school boards exercising essentially administrative functions when the members thereof were appointed rather than being elected, the Iowa court concluded that "[w]hen the legislature changed the method of selection of the

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ment (see Appendix, *infra*, pp. 43–44). Moreover, the majority opinion of the three-judge court in *Sailors* said little more than that it was expedient to wait for this Court to determine whether the equal-population principle should be applied at the local governmental level (see 254 F. Supp. at 28–29). Compare, however, the dissenting opinion (*id.* at 18–28).

county boards to elective rather than appointive * * * the members [thereof] then became the direct representatives of the people, and the state and federal constitutions require their election on an equal representation basis" (*id.* at 620). This was so, the court indicated, because "[t]he fact that an elective method of selection has been chosen implies that each citizen is thought to have an equal stake in [the] composition [of such school boards]" (*ibid.*). *Sailors* was readily distinguished as having "dealt with the *appointment* of local administrative officials and not the election of them" (*id.* at 621), and the Iowa court concluded (*ibid.*):

> Since it is a basic principle of representative government that the weight of a person's vote does not depend on geographical boundaries, it follows logically that any inferior *elective* body, that is representative of the people, be representative of all the people equally. * * *

Since the Iowa legislature had chosen "to make members of the board elective rather than appointive, it intended that these members represent the people and not geographical land areas," and "[e]ach voter similarly situated is entitled to equal reprsentation," the court determined (*ibid.*). Concluding that the county school boards exercised "legislative functions" (*id.* at 622), although of a limited and attenuated variety, the Iowa court went on to hold that, consistent with *Sailors,* "where the legislature chooses to submit the selection of an official or board to the electorate, it is of no consequence whether its functions affecting the personal and property rights of the people

are administrative or legislative" (*id.* at 623).[9] Accordingly, the court held that the area-based districting scheme was unconstitutional, and that the election of county school board members "must be made on a population basis, not upon area" (*id.* at 624).

Having the benefit not only of the decisions and opinions in *Delozier, Strickland* and *Meyer,* but also the gloss of this Court's discussion and holding in *Avery,* it is surprising that the court below—which had earlier held the equal-population principle applicable to the election of city council members in *Armentrout* v. *Schooler,* 409 S.W. 2d 138 (Mo. Sup. Ct.)—rejected the reasoning of these cases and concluded that the equal-population principle was inapplicable to the election of school boards. In so doing, the Missouri court invoked *Sailors,* charging the Iowa Supreme Court in *Meyer* with having "misconstrued the opinion in *Sailors*" (A. 34).[10] We have already indicated why any reliance on *Sailors* in this regard is misplaced. It remains to show that the efforts of the court below to distinguish *Avery* are unconvincing, and it is to that decision that we now direct our attention.

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[9] This, of course, is exactly what this Court determined in *Avery* in regard to the suggested distinction between legislative and administrative functions, albeit there as to a county governing body and not a school board (see 390 U.S. at 482).

[10] The Missouri court rejected *Delozier* and *Strickland* along with *Meyer,* viewing the courts in all of them as having erred in failing "to distinguish between school districts and local bodies having general governmental powers and functions" (A. 34), obviously seeking, in suggesting such a distinction, to rely on this Court's decision and opinion in *Avery* (see 390 U.S. at 485–486).

III. BOTH THE HOLDING AND OPINION OF THIS COURT IN THE *AVERY* CASE, AS WELL AS ITS UNDERLYING RATIONALE, SUPPORT APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

In *Avery* the Court put to rest the confusion and uncertainty which had theretofore existed by holding that the equal-population principle of *Reynolds* was generally applicable at the local governmental level. That case involved a county governing body, while the instant case involves a school board. Because of this difference, and in reliance on certain language in the Court's opinion in *Avery* as well as on *Sailors*, the Missouri court here found *Avery* not controlling. In so concluding, we submit, the court below erred. Carefully analyzed, both the holding and opinion in *Avery* provide substantial support for application of the equal-population principle to elected school boards. Moreover, the underlying rationale of that decision, just like that of *Reynolds* and similar cases, argues strongly for holding that when members of a local school board are elected, under state or local law, by the people on a district basis, those districts are required by the Equal Protection Clause to be substantially equal in population.

In its opinion in *Avery* the Court started with the estabished proposition that "[t]he Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions" (390 U.S. at 479). Interestingly, it cited and quoted from *Cooper* v. *Aaron*, 358 U.S. 1, in support of this proposition (390 U.S. at 479–480). *Cooper* v. *Aaron* was of course a case involving a school board, just like the instant case. The Court then expanded further on this theme, stating that "[a]lthough the

forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment" (390 U.S. at 480). School boards, like other local bodies, are subject to and are required to comply with the Equal Protection Clause in regard to matters such as racial discrimination. *E.g., Brown* v. *Board of Education,* 347 U.S. 483; *Goss* v. *Board of Education,* 373 U.S. 683; *Bradley* v. *School Board,* 382 U.S. 103. There can be no doubt, then, that the actions of school districts, no less than the actions of counties, cities and towns, are within the ambit of the Equal Protection Clause.

Next the Court in *Avery* directed its attention to the specific issue of apportionment. It first stated that "when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process" (390 U.S. at 480). Then, in language that appears to come close to resolving the question presented in the instant case, the Court indicated (*ibid.*):

> If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, *school board,* or county governing board are elected from districts of substantially unequal population. * * * [Emphasis added.]

That reference to school boards was of course dictum, for the *Avery* case itself involved a county governing board. Nevetheless, the inclusion of school boards in this listing is significant, indicating that the logical sweep of the underlying rationale of the decision there encompasses those bodies as well.

The opinion proceeds by stating: "That the state legislature may itself be properly apportioned does not exempt subdivisions from the Fourteenth Amendment" (390 U.S. at 481). This is so, the Court noted, because "the States universally leave much policy and decisionmaking to their governmental subdivisions," and "do not attempt to reach those countless matters of local concern necessarily left wholly or partly to those who govern at the local level" (*ibid.*). It is clear beyond cavil that "much policy and decisionmaking" is consistently left to school districts, and that such matters are preeminently ones "of local concern necessarily left" in large part to school board members. In noting that, with respect to local governing bodies, "the States characteristically provide for representative government—for decisionmaking at the local level by representatives elected by the people" (*ibid.*), the Court's language at least implicitly included school boards. An extremely high percentage of school board members in this country are selected through the elective process—about 93 percent (see Appendix, *infra,* pp. 43–44). Admittedly some 90 percent of those elected are elected at large, rather than from districts. Nonetheless, the fact that the vast majority of school board members are elected rather than appointed shows a considered preference for these

bodies being representative in character. Where they are elected from districts, the rationale of the Court's approach in *Avery* strongly supports application of the equal-population principle there held applicable to county governing boards similarly elected. School districts, still the most numerous category of local government despite continuing reduction in their total number through consolidations, particularly in rural areas,[11] are plainly "institutions of local government" which constitute "a major aspect of our system" and whose "responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens" (390 U.S. at 481).

Turning to one of the central contentions made against extending the equal-population principle to the local governmental level, the Court in *Avery*

[11] See Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization," p. 1, which showed that, as of 1967, there were 81,248 units of local government in the United States, of which there were 3,049 counties, 18,048 municipalities, 17,105 townships, 21,264 special districts, and 21,782 school districts. In addition to these 21,782 independent school districts, there were also some 1,608 "dependent" school systems, operated in the main by other units of local government, resulting in a total of 23,390 public school systems in this country (*id.* at 6), the total enrollment of which amounted to about 43.8 million pupils, as of October 1966 (*ibid.*). The marked decline in the total number of school districts during the past 25 years is exemplified by the following chart (*id.* at 3):

School year	*Number of school districts*
1966–67	21,872
1961–62	34,678
1956–57	50,454
1951–52	67,355
1941–42	108,579

hurriedly dismissed any reliance on labelling the functions of a particular body as "administrative" or "legislative", noting that the body there involved, and by implication most local governing bodies, "cannot easily be classified in the neat categories favored by civics texts" (*id.* at 482).[12] Recognizing that most local bodies have an amalgam of powers and functions which defy singular characterization, and that these bodies are not only numerous but extremely diverse, the Court determined instead to take a "pragmatic approach" to the problem of determining which of them were covered by the equal-population principle (*id.* at 482–483). Finding that the board there involved had "the authority to make a substantial number of decisions that affect all citizens" of the county (*id.* at 484), the Court held the Equal Protection Clause "permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body" (*id.* at 485). Again, in concluding, the Court reiterated the "one ground rule for the development of arrangements of local government" that it was laying down in *Avery*—"a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population" (*id.* at 485–486).

Thus, the question here, insofar as the relevance of the *Avery* holding is concerned, resolves itself into whether school districts, like counties and cities, are

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[12] See, in this regard, Note, 53 Va. L. Rev. 953, 960–961, 965–966 (1967).

units of local government having general governmental powers over the entire geographic area that they serve.[13] In the instant case, the Missouri Supreme Court answered that question negatively, and concluded that *Avery* was inapplicable to elected school boards. That determination, we submit, was erroneous, for school districts, despite their special-purpose, single-function status, are nonetheless units of local government with general powers over the area they serve in regard to the critical subject of education. It is to this issue, on the basis of which the Missouri court distinguished *Avery,* that we now turn.

IV. NEITHER THE FACT THAT A SCHOOL BOARD MAY BE THOUGHT TO EXERCISE ADMINISTRATIVE AS DISTINGUISHED FROM LEGISLATIVE POWERS, NOR THE FACT THAT SCHOOL DISTRICTS ARE SPECIAL-PURPOSE, SINGLE-FUNCTION UNITS OF LOCAL GOVERNMENT, MAKES THE RATIONALE OF *REYNOLDS* AND *AVERY* INAPPLICABLE

As discussed earlier (*supra,* pp. 12–13), the Missouri Supreme Court, in holding the equal-population principle inapplicable, repeatedly intimated that the body involved here is not covered by the equal-population principle because its functions are essentially administrative and not legislative in character. Putting to one side the court's misplaced reliance on *Sailors,* and its misreading of *Avery* in this regard, we now turn to that argument directly.

As we developed at some length in our *amicus* brief in the *Avery* case,[14] the constitutional touchstone of

[13] See, *e.g.*, McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 729 (1968).

[14] See brief for the United States as *Amicus Curiae*, *Avery* v. *Midland County*, No. 39, 1967 Term, pp. 41–57.

the Court's decision in *Reynolds* is the Equal Protection Clause, and the focus of the Court there was on the individual voter, not on the nature of the bodies whose apportionment was at issue. The essence of *Reynolds*—and of *Avery*'s application of *Reynolds* to local government—is that a citizen's right to vote, where conferred under State law, cannot be diluted or debased simply because of where, within a particular area, that person happens to reside. Unless the equal-population principle is applied to the district-based election of school board members, citizens similarly situated would be treated differently, as to the weight of their vote, on the basis of where they happen to live, regardless of whether such a body be viewed as administrative, or legislative, or executive, or some combination of all of these.[15]

We further developed, in our *Avery* brief, the notion that a legislative/administrative delineation would not only be difficult to sustain as a constitutional matter, but that it would moreover be wholly impractical to seek to apply such a distinction at the local governmental level. This stems from the fact that most local bodies constitute the repositories of a varied array of powers and frequently engage in a

[15] We do not contend that there is anything in the nature of school boards which requires that their members be elected, instead of appointed. There is no need to reach any such issue here, for an elective system is plainly provided for in the instant case. Our position, then, is grounded essentially on what this Court stated in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 665: "[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause * * *."

number of different and diverse functions. This is so not only with regard to general-function units like counties and cities, but also with respect to at least some more specialized units, such as school districts. While the subject with which school boards deal is a single one, in doing so they undertake a variety of tasks that defy easy description. Most school boards have taxing powers (see Appendix, *infra*, pp. 43–44), an authority traditionally viewed as legislative in character and one of the important powers of the county governing board in the *Avery* case which led the Court to hold the equal-population principle applicable there (see 390 U.S. at 483–484). Like the junior college district involved here, many school districts have the power of condemnation as well. Many of them, again as the unit here, have the authority to issue bonds. And most of them exercise a number of other powers regarding matters such as personnel, curricula, transportation, discipline, and the like that are not easily classified. Like other local bodies, school boards have a mixture of powers which simply forbids facile categorization. As we concluded in our *Avery* brief, the sort of functional approach which some suggest is one that, in point of fact, would prove unworkable in practice and virtually impossible of reasoned and judicially economical application. That view, we submit, was adopted by this Court in *Avery*, and it applies no less to school boards than to the county governing board there involved.

Indeed, if anything, the instant case is an easier one for application of the equal-population principle than *Avery*. There the Court was faced with the dif-

ficult problem of "overlapping jurisdiction." The Court in *Avery* had necessarily to concede that the county board there involved concentrated much of its attention on matters affecting the rural areas of the county, while the city council of Midland served, in the main, as the general-function unit of local government for residents of the urban area (see 390 U.S. at 483–484). Despite this, the Court found that the county board had "the authority to make a substantial number of decisions that affect all citizens, whether they reside inside or outside the city limits of Midland" (*id.* at 484). With respect to school boards, however, no overlapping jurisdiction problem is ordinarily presented. As a general matter, independent school districts are autonomous with respect to the matter of public education within the geographic area which they serve. No citizen living within that area can be said to be affected in a significantly different fashion by actions of his local school board than another citizen situated in some other part of the same area. In this respect, then, the instant case presents less difficulty with respect to the application of the equal-population principle than *Avery*.

In spite of these considerations, the Missouri court here found *Avery* distinguishable. In doing so it reasoned that "[a] school district, unlike a municipal corporation (city or county) is an instrumentality of the state created for one single purpose and with one single function,—education" (A. 34). The court then proceeded to detail the powers and duties of a junior

college district under Missouri law—which do not appear to differ significantly from those of the county board involved in *Avery* except that they relate solely to the subject of education—and concluded that such a school district "has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers" (A. 35), language rather reminiscent of that of the Texas Supreme Court in regard to commissioners courts in that State (see 390 U.S. at 483). That groundwork having been laid, the Missouri court stated its result: "We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is ***not*** a 'unit of local government having general governmental powers over the entire geographic area served by the body' " (A. 36).

Thus, apart from its misplaced reliance on *Sailors* and the legislative/administrative dichotomy, the Missouri court, in the last analysis, found *Avery* distinguishable because of the fact that the school district involved here, like all school districts, is a special-purpose, single-function unit of local government which, therefore, lacks "general governmental powers over an entire geographic area" as required by the opinion in that case. But school districts do, we submit, exercise such general governmental powers in the sense that that phrase was intended to be used in the *Avery* opinion.

As the opinion in *Reynolds* points out, the Equal Protection Clause "has been traditionally viewed as

requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged" (377 U.S. at 565). Applying that settled principle, the result there flowed from a finding that "[w]ith respect to the allocation of legislative representation, all voters, as citizens of a State, stand in the same relation regardless of where they live" (*ibid.*). An obvious corollary is that where persons are not similarly situated *vis-à-vis* the particular body, different treatment is permissible and classifications are valid so long as they are rationally related to and take properly into account the differences in how the persons are situated. In the apportionment context, where a governmental body's actions do not touch or involve all citizens generally, but only a discrete and identifiable part of the citizenry in a significant way, then a districting plan that rationally takes this consideration into account may comport with the requirements of the Equal Protection Clause, even though entailing substantial deviations from a population basis.[16]

It was in view of these considerations, it seems ap-

[16] See, *e.g.*, *Thompson* v. *Board of Directors of the Turlock Irrigation District*, 29 Court Decisions on Legislative Apportionment (National Municipal League) 9 (Calif. Ct. App.), where such an approach was taken with respect to the apportionment of seats on the governing body of an irrigation district, a special-function unit whose purpose was apparently limited to distributing water to rural lands within its boundaries (see *id.* at 12–13). While holding the equal-population principle inapplicable, the California court did find the districting invalid as a matter of State law and required that some adjustment be effected (see *id.* at 14–18). Cf. *Kramer* v. *Union Free School District No. 15*, 282 F. Supp. 70, 74–75 (E.D.N.Y.), pending on appeal, No. 258, this Term (but see

parent, that the court in *Avery* stated (390 U.S. at 483–484):

> Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions. * * *

There the Court went on to conclude that that question was not presented, since the county governing board involved had the authority to make a variety of important decisions affecting all citizens of the county, wherever they resided (*id.* at 484). In other words, for Equal Protection Clause purposes, all citizens of Midland County were situated in a substantially similar fashion. It was against this background, moreover, that the Court made reference to "units of local government having general governmental powers over the entire geographic area served by the body" as being within the ambit of the equal-population prin-

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the dissenting opinion in that case of Judge Weinstein, 282 F. Supp. at 75–86, and compare the Missouri court's reliance on an article by the same individual for the proposition that "it is doubtful if the one man, one vote principle should be applied to *special purpose* units of local government which have limited purposes and functions" (A. 34–35)). However the *Kramer* case is decided by this Court, it should be noted, it will not be dispositive in the instant case since *Kramer* is a voting, not an apportionment, case. Cf. also *Cipriano* v. *City of Houma*, 286 F. Supp. 823 (E.D. La.), pending on appeal, No. 705, this Term, like *Kramer* a voting, not an apportionment, case; and see the Second Circuit's earlier opinion in *Kramer*, reported at 379 F. 2d 491.

ciple (*id.* at 485). Thus, the Missouri court's reliance on this phrase as determinative, and its focus on the fact that school districts are special-purpose, single-function units of government as a ground for distinguishing *Avery*, are demonstrably inappropriate.

In our view, the fact that school districts are special-purpose, single-function units of local government is not determinative with respect to whether the equal-population principle of *Reynolds* and *Avery* should be held applicable to the district-based election of school board members. Indeed, this consideration at best merely poses the question the Court found it unnecessary to reach in *Avery*—whether deviations from population-based representation were permissible with respect to special-purpose units "assigned the performance of functions affecting definable groups of constituents more than other constituents" (390 U.S. at 483–484). But once the nature of public education is considered, and the pervasive impact that local school boards and the decisions they make have on all citizens is taken into account, it seems clear that there is no more need to reach that question here than there was in *Avery*. Just as with county governing boards such as that involved in *Avery*, school boards across the country have "the authority to make a substantial number of decisions that affect all citizens" (*id.* at 484). No ascertainable or definable group within the citizenry generally is in a substantially different situation with respect to school boards. Whether parents, taxpayers or simply members of the community, all citizens have a vital interest in, and are significantly affected by, the actions of local

school boards. At all events, there was no showing here that any even arguably rational differences among citizens in this regard played any role in the shaping of the Missouri statute here challenged, which appears to sanction deviations from a population basis simply in order to disfavor more populous areas. Within their sphere, school boards exercise governmental powers generally affecting all citizens residing within the geographic area which they serve. They should thus be held within the ambit of the equal-population principle where, as here, their members are elected on a district basis.

V. SOUND POLICY CONSIDERATIONS ALSO FAVOR APPLICATION OF THE EQUAL-POPULATION PRINCIPLE TO ELECTED SCHOOL BOARDS

There are, finally, weighty considerations of public policy which support application of the equal-population principle to elected school boards.[17] As this Court said in *Avery* (390 U.S. at 481): "[I]nstitutions of local government have always been a major aspect of our system, and their responsible and responsive operation is today of increasing importance to the quality of life of more and more of our citizens," since there are "countless matters of local concern [which are] necessarily left wholly or partly to those who govern at the local level" (*ibid.*). This is preeminenty true with respect to public education, which, more than any other subject, has traditionally been viewed as an essentially local matter. Moreover, the Court also

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[17] See generally, in this regard, McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 730–731 (1968).

pointed out that, in establishing local governments, "the States [have] characteristically provide[d] for representative government—for decisionmaking at the local level by representatives elected by the people" (*ibid.*). Again, this is most particularly so with regard to school districts, for over 93 percent of the school boards in this country are composed of representatives elected by the people (see Appendix, *infra*, pp. 43–44; see *supra*, pp. 23–24). About 90 percent of these elected school boards are elected on an at-large, instead of a district basis (*ibid.*), but that hardly argues against holding the equal-population principle applicable to school boards generally so as to require that, where districts are provided for, as in the instant case, they must be substantially equal in population.

Indeed, the fact that the overwhelming majority of school boards are elected indicates a distinct preference for direct participation by the citizen in the shaping of educational policies. Yet that participation can truly be effective, and the body in fact as well as in form representative, only when all citizens are given the opportunity to elect school board members on an equal basis. Moreover, school districts are generally single-function governmental units, indicating a considered desire that issues regarding education be isolated from other matters of governmental concern and that specific viewpoints on educational questions be expressed by the electorate. In these circumstances, the right to vote for school board members should be vigorously protected against dilution and undervaluation through devious districting schemes. Because of the importance of public education and its pervasive im-

pact in our society, the right to vote for school board members may well be more important than the right to select many other representatives.

Education unquestionably plays a critical role in the lives of all citizens and is a matter of foremost concern of government and governed alike. While public education is rarely a purely local responsibility, local units of government typically exercise broad discretion and have considerable autonomy in this vital area. School boards remain the most numerous and common of the various types of local governmental bodies (see note 11, *supra*). Indeed, the 21,782 independent school districts in this country constitute over one-fourth of the total number of local governmental units (*ibid.*). School boards are important bodies not only because of their number, but because of the financial impact they have in our society. Certainly from the point of view of expenditures, education is the "most important function" of local governments today no less than it was 15 years ago when this Court decided *Brown* v. *Board of Education,* 347 U.S. 483, 493. Expenditures for public education far surpass any other single item of governmental activity at the local level. In 1966–67 about 48.5 percent of the direct general expenditures of local governments was for education—some $28.8 billion out of a total of about $59.5 billion.[18] Not only, then, is the proportion

[18] Dept. of Commerce, Bureau of the Census, Governmental Finances in 1966–67, p. 23. Of this $28.8 billion, about $1 billion went for institutions of higher education, with the remainder going to local elementary and secondary schools (*ibid.*; see generally *id.* at 8–9).

of local government expenditures for education significant—almost one-half of the total—but the figures involved are, as an absolute matter, quite substantial. Public education in this country is big business, and it is getting bigger each year as pupil enrollments increase and costs of operation continue to rise.[19] Indeed, although no figures are readily available, it can be safely assumed that the operating budgets of some of our larger school systems exceed the expenditures of a number of our smaller States.

Perhaps even more significant than these considerable and growing financial expenditures for public education is the qualitative impact that school districts have on the lives of all those living in the area subject to their jurisdiction. Decisions regarding the operation of school systems often stir more public interest and controversy than any other subject handled at the local governmental level. School boards frequently operate rather independently of State or other local control, and exercise powers which have a substantial impact on all citizens of the community, whether they have children of school age, pay taxes that directly support the school system, or simply live and work there. School boards usually have authority over educational facilities, including decisions such as when and where to build new school buildings, what sort of special equipment to provide, and the like. They exercise control over all personnel con-

[19] Expenditures for public education have increased by over $10 billion in the last five years. See Governmental Finances in 1966–67, *supra*, at 18.

nected with the school system, including teachers, administrators, and other employees. In this regard they deal with thorny and difficult problems such as teacher salaries, qualifications, assignments, promotions, and dismissals. They also prescribe curricula for use in the public schools, and play a role in determining what books are to be utilized. And they typically have the ultimate responsibility in the increasingly difficult and often delicate matter of student discipline.[20] More generally, most school districts levy and collect taxes in substantial amounts, and many of them have the power to condemn property. School boards also ordinarily fix their budgets, and, of particular interest to the United States, administer an increasing number of federal educational assistance programs.[21] Most of them also have the authority to annex areas and to make determinations regarding the boundaries of school-attendance zones. Similarly, they make important decisions such as whether special pro-

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[20] See, *e.g.*, *Tinker* v. *Community School District*, No. 21, this Term, decided February 24, 1969 (slip op., pp. 4–5).

[21] In 1966–67 the total federal expenditures for education amounted to about $3.9 billion, much of which went directly to local governmental units under a variety of assistance programs. See Governmental Finances in 1966–67, *supra*, at 17, 24. Moreover, these expenditures have been growing rapidly in the past few years, having tripled in amount in the last three years (*id.* at 17). Federal assistance programs include those under the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. (Supp. II) 241a *et seq.*, 821 *et seq.*), the National Defense Education Act, as amended (20 U.S.C. 421 *et seq.*), and the National School Lunch Act (42 U.S.C. 1751 *et seq.*). Most of the federal assistance takes the form of various grants-in-aid made to State and local governments, including, most importantly, local school boards.

grams of remedial and adult education will be provided, whether shared-time programs with private schools will be initiated, and whether public school busses will be provided for children attending private schools. In areas where racially separate public school systems previously prevailed, they determine what course to pursue to terminate racial segregation in the schools and to achieve a truly integrated system which will provide all students, whatever their race, with a good education on the basis of complete equality. Throughout the country they are called upon to resolve the pressing problems of ensuring that children living in our urban ghetto areas are provided with an educational opportunity equal to that of those who are better advantaged. In short, the school boards of this country are responsible for a whole gamut of important matters, most of which do not admit of easy resolution and many of which are of vital interest to the citizenry generally, and they are typically given a variety of substantial powers to carry out their tasks, the exercise (and sometimes inexercise) of which has a profound effect on the lives of all Americans.

School boards have been an important unit of local government since the emergence of the public school systems in this country during the last century. As part of government closest to the people, they constitute instrumentalities in which active citizen participation in matters of community interest can be most effectively realized. Citizens are likely to have more familiarity with, and thus a greater concern for the outcome of, problems within the cognizance

of local units of government, like school districts. And the demands on school boards are growing. Particularly in our metropolitan areas, with the rapid growth of urbanization, the influx of persons from rural areas, and the greater concern with obtaining an adequate education, the pressures on local governments, including school districts, are increasing. The already fast growth of our population has been outstripped by the even faster growth of our school-age population. This, along with the expansion of knowledge during the past several decades, has accentuated the complexity of the problems facing those officials responsible for public education, especially in densely populated urban areas. Against this background, significant progress in public education can be achieved only through the enlightened operation of our school systems by viable governmental entities fairly representative of the people.

Malapportionment at the local level almost invariably results in governing bodies which are less than wholly responsive to the more populous areas where the problems of public education are most difficult. If decisions on these problems are to be made in the democratic tradition, they must be made by governing bodies which are truly representative in character, are sensitive to the wants and needs of the community, and are committed to a continuing search for solutions through innovation and through effort. Of specific concern to the United States is the fact that education is a vital matter for members of various minority groups in this country which have long been the victims of discrimination. With them in mind, the Voting Rights Act of 1965 (42 U.S.C. (Supp. II)

1973 *et seq.*) "was designed by Congress to banish the blight of racial discrimination in voting, which has infected the electoral process in parts of our country for nearly a century" (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 308). Yet, the salutary goal of that legislation will not be fully realized if discrimination against minority groups can be perpetuated,[22] albeit indirectly, through the maintenance of malapportioned local governing bodies.

Effective involvement in government at the local level may be more meaningful for newly enfranchised voters than the right to vote for congressmen or State legislators. The most urgent needs and the most pressing interests of these citizens often relate to those everyday matters and basic programs which are within the purview of local elected officials, and not infrequently school board members. And on the local level constituencies are relatively small, so that the voter-representative relationship tends to be far more direct. Voices of minority group voters and their elected representatives might be somewhat muted at the national and State levels by those of the majority. But members of local governing bodies, such as school boards, importantly dependent on these voters for election and reelection, might be expected to be more responsive to minority groups and more interested in handling their detailed, day-to-day problems. Reliance on State legislatures and the federal government to meet their needs is simply insufficient.

[22] Cf. two of the Mississippi cases—*Fairley* v. *Patterson*, No. 25, this Term, and *Bunton* v. *Patterson*, No. 26, this Term—decided along with *Allen* v. *State Board of Elections*, Nos. 3, *et al.*, this Term, decided March 3, 1969.

Properly apportioned local governing bodies are essential in this regard.

CONCLUSION

For the reasons stated, the judgment of the Supreme Court of Missouri should be reversed and the cause remanded for further proceedings not inconsistent with an opinion concluding that the equal-population principle of *Reynolds* and *Avery* is applicable to elected school boards such as the junior college district board of trustees involved in the instant case.

Respectfully submitted.

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MAY 1969.

APPENDIX

SCHOOL DISTRICTS
(INCLUDES ONLY THOSE CLASSIFIED AS "INDEPENDENT" BY BUREAU OF THE CENSUS)

	Total	Elected	Appointed	Taxing power	Community or junior college districts
Alabama	119	67	52	All	
Alaska	[1] 1	1	None	None	
Arizona	242	All	None	All	X
Arkansas	402	All	None	All	X
California	1,239	1,237	2	All	X
Colorado	191	Most	Few	All	X
Connecticut	[1] 9	All	None	None	
Delaware	50	Most	Few	All	
District of Columbia	1	All	None	None	
Florida	67	All	None	All	X
Georgia	194	Some	Some	Most	X
Hawaii	[2] None				
Idaho	120	All	None	All	X
Illinois	1,350	Most	Few	All	X
Indiana	399	Most	[3] Few	All	X
Iowa	478	All	None	All	X
Kansas	360	358	2	All	X
Kentucky	200	All	None	All	X
Louisiana	67	All	None	All	X
Maine	[1] 65	Some	Some	All	X
Maryland	[4] None				
Massachusetts	[1] 44	Some	Some	All	X
Michigan	935	All	None	All	X
Minnesota	1,282	All	None	All	
Mississippi	161	Some	Some	All	X
Missouri	870	All	None	All	X
Montana	713	Most	Few	All	X
Nebraska	2,322	All	None	All	X
Nevada	17	All	None	All	
New Hampshire	[1] 181	Most	Few	All	
New Jersey	[1] 522	All	None	All	X
New Mexico	90	All	None	All	X
New York	[1] 916	Most	Few	All	X
North Carolina	[5] None				X
North Dakota	538	All	None	All	X
Ohio	[1] 710	All	None	All	X
Oklahoma	960	All	None	All	X
Oregon	398	All	None	All	X
Pennsylvania	749	747	2	All	X
Rhode Island	[6] 3	None	All	All	
South Carolina	108	Few	Most	Some	
South Dakota	1,984	All	None	All	
Tennessee	[7] 14	Some	Some	Some	
Texas	1,306	All	None	All	X
Utah	40	All	None	All	
Vermont	297	Most	Few	Some	
Virginia	[8] None				

SCHOOL DISTRICTS (INCLUDES ONLY THOSE CLASSIFIED AS "INDEPENDENT" BY BUREAU OF THE CENSUS)—Continued

	Total	Elected	Appointed	Taxing power	Community or junior college districts
Washington	346	All	None	All	X
West Virginia	55	All	None	All	
Wisconsin	519	Most	Few	Some	
Wyoming	177	All	None	All	
Total	21,782	20,246	[9] 1,536	([10])	[11] 20

[1] All others dependent.
[2] Handled by State government.
[3] Some governed by *ex officio* members.
[4] All dependent; all but 1 appointed.
[5] All dependent; some elected.
[6] All others dependent; all elected.
[7] All others dependent; some elected.
[8] All dependent; all appointed.
[9] Figures derived somewhat arbitrarily by attributing fractions to terms used as follows: Most—¾; Some—½; Few—¼.
[10] No approximation possible.
[11] States.

Source: Department of Commerce, Bureau of the Census, 1967 Census of Governments, Vol. 1, "Governmental Organization," "Individual-State Descriptions," pp. 297 *et seq.*

* * * * *

As the above figures show, approximately 93 percent of all members of the governing boards of independent school districts in this country are elected, and only 7 percent are appointed. Even some of the members of "dependent" school boards are elected, either directly or by virtue of their *ex officio* capacity.

A sampling of State statutes in States having large numbers of elected school boards showed that about 90 percent of these are elected at large, and only 10 percent on a district basis. States sampled were: California, Illinois, Kansas, Minnesota, Missouri, Montana, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Washington, Wisconsin, and Wyoming.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 37

DELLA HADLEY et al.,
Appellants,

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLEES

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, LUCILE S. STARK, LILLIAN WAGNER and GWENDOLYN M. WELLS,
Appellants,

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, JAMES W. STEPHENS, President, WILLIAM L. CASSELL, REED B. KENAGY, JR., and MRS. Y. B. WASSON, Members, and LINDA L. COULSON, Secretary, of the Board of Trustees of The Junior College District of Metropolitan Kansas City, Missouri,

AND

HONORABLE NORMAN H. ANDERSON, Attorney General of the State of Missouri,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLEES

QUESTION PRESENTED

Whether provisions of Section 178.820-1 of the Missouri Revised Statutes violate the Equal Protection Clause

of the Fourteenth Amendment to the United States Constitution because they establish a certain percentage formula based upon school enumeration, the number of persons between the ages of six and twenty years, for the election of junior college trustees from component school districts.

STATEMENT

Appellees do not believe a full restatement of the case is necessary, but certain provisions in the Missouri statutes regarding the organization and limitations of a junior college district—as well as its powers as alluded to by appellants (Appellants' Brief 6-7)—should be noted.

The Junior College District of Metropolitan Kansas City, Missouri is a junior college district organized and existing under the provisions of Sections 178.770 through 178.890 of the Revised Statutes of Missouri first enacted in 1961 (A. 17). These statutes are set out in full as a Brief Appendix attached hereto (B.A. 1a-13a).

Prior to the organization of any junior college district, the State Board of Education, which is appointed by the Governor (Mo. CONST., Art. IX, § 2(a); R.S.Mo. (1967 Supp.), § 161.022), establishes standards including whether a junior college is needed, whether the assessed valuation will support it and whether there are a sufficient number of high school graduates in the proposed district. R.S.Mo. (1967 Supp.), § 178.770 (B.A. 1a-2a). The boundaries of the junior college district must coincide with the boundaries of the component school districts therein which provide educational courses through the 12th grade. *Id.*, § 178.790 (B.A. 3a). Upon the petition of a certain percentage of the voters in each component school district praying that a junior college district be organized to offer 13th and 14th year courses, the State

Board of Education ascertains if its standards are met and, if so, orders that an election be held. To carry the proposal to organize a junior college district must receive a majority of the total votes cast, after publication notice of the organization election has been given. *Id.*, §§ 178.800, 178.810 (B.A. 3a-5a).

Section 178.820, which is attacked by appellants as unconstitutional, sets forth the procedure for election of the six junior college trustees, establishing a certain percentage formula based upon "school enumeration" which is defined elsewhere as "an enumeration of all persons between the ages of six and twenty years." R.S.Mo. (1967 Supp.), § 167.011.[1] If one or more component school districts has more than 33-1/3% and not more than 50% of the total school enumeration of the proposed district, as determined by the last school enumeration, then two trustees shall be elected from each such district and the remaining trustees shall be elected at large from the other school districts. If any school district has more than 50% and not more than 66-2/3% of the total school enumeration, such district shall elect three trustees and the remaining three shall be elected at large from the remainder of the proposed district. If any school district has more than 66-2/3% of the total school enumeration, four trustees shall be elected from such school district and two trustees at large from the remainder of the proposed district.

1. Section 167.011-1 provides in part that "the school board of each district in the state shall cause to be taken and forwarded to the county superintendent of schools an enumeration of all persons between the ages of six and twenty years, resident within the district, giving the name and age of each person, designating male and female, blind and deaf, together with the full name and post-office address of the parent or guardian of each person." Section 167.011-2 provides that "The enumeration shall be taken during each school year and submitted prior to the fifteenth day of May in all districts," with certain exceptions.

The Junior College District of Metropolitan Kansas City, Missouri was organized on June 5, 1964 pursuant to an election held May 26, 1964. Its geographical boundaries include parts of Jackson, Clay, Cass and Platte counties in Missouri, a total of 400 square miles. Since its organization, appellee District has maintained a junior college offering 13th and 14th year courses to all students enrolled therein. There are eight component school districts in appellee District consisting of:

Kansas City School District No. 33,
Center School District No. 58 (south Kansas City),
Consolidated School District No. 1 (Hickman Mills),
Consolidated School District No. 2 (Raytown),
Consolidated School District No. 4 (Grandview),
Reorganized School District No. 7 (Lee's Summit),
North Kansas City School District No. 74 and
Belton School District No. 124.

In 1966-67, the Kansas City School District had 59.49% of the total school enumeration for the junior college district and accordingly has three trustees. The other three trustees were elected from the remaining seven component school districts, with 40.51% of the total school enumeration (A. 17-18, 38).

While a junior college district has certain enumerated powers, R.S.Mo. (1967 Supp.), § 178.770-2 (B.A. 1a-2a), the junior college district statutes themselves provide that all junior colleges so organized "shall be under the supervision of the state board of education." *Id.*, § 178.780 (B.A. 2a). This gubernatorially appointed board administers State financial support; formulates uniform policies as to budgeting, record keeping and student accounting; establishes uniform minimum entrance requirements and curricular offerings; and is responsible for the ac-

creditation of all junior colleges under its control. *Ibid.* Furthermore, certificates to teach in the public schools of Missouri are granted and controlled by the State Board of Education and other authorities, not by the junior college district. *Id.* §§ 168.021, 168.061, 168.071. And there are other limitations upon school districts generally which frequently require their obtaining voter approval. For example, any bond issue by any school district must be approved by two-thirds of the votes cast upon a ballot stating the amount and purposes of the loan. *Id.*, § 164.151. In the Junior College District of Metropolitan Kansas City, any annual tax levy cannot exceed ten cents per $100 valuation without voter approval. *Id.*, § 178.870 (B.A. 11a).

ARGUMENT

Summary

The decision below of the Missouri Supreme Court *en banc* is correct and should be affirmed by this Court.

1. Appellee The Junior College District of Metropolitan Kansas City is a special-purpose body with essentially administrative functions, created under Missouri statutes by the voters of the district for the sole and particular purpose of conducting a two-year college.

2. The decision below is consistent with those of this Court, including *Avery* v. *Midland County*, 390 U.S. 474 (1968), and *Sailors* v. *Board of Education*, 387 U.S. 105 (1967), in that appellee Junior College District is not an entity "having general governmental powers over the entire geographic area served by the body." *Avery* v. *Midland County, supra,* at 485. Accordingly, the "one man, one vote" principle is not applicable, and there is no violation of the Equal Protection Clause under the reasonable percentage formula of Missouri's Section 178.820

for electing junior college trustees based upon school enumeration.

3. The statutory percentage formula for electing junior college trustees in Section 178.820 is not violative of equal protection, furthermore, because the formula is based upon school enumeration and not population, after a proposal to organize a junior college district is carried by majority vote at an at-large election. School enumeration, the annual "enumeration of all persons between the ages of six and twenty years," R.S.Mo. (1967 Supp.) § 167.011, is a reasonable and appropriate standard, and there is nothing invidious or arbitrary about Missouri's statutory percentage formula based thereon for electing junior college trustees, such formula reflecting the statutory design of encouraging various and oftentimes diverse component school districts to join together and form a junior college district.

1. Appellee Junior College District of Metropolitan Kansas City is a special-purpose body with essentially administrative functions, created under Missouri statutes by the voters of the district for the sole and particular purpose of conducting a two-year junior college.

At the outset, it is most important to recognize appellee Junior College District for what it really is. The earlier Statement in this brief and even a cursory examination of the junior college statutes appended hereto (B. A. 1a-13a) abundantly demonstrate that a Missouri junior college district is "truly a special purpose unit of government," as stated in the decision below (A. 34). As distinguished from the broad characterization in appellants' brief (App. B. 6-7, 10), the circumscribed powers and statutory limitations of a Missouri junior college district were pointed out by the Missouri Supreme Court *en banc*, in its six-to-one decision, as follows:

> "The defendant district may only levy taxes to the extent specifically prescribed by statute, except by a vote of the people; it may not incur indebtedness and issue bonds except by a vote of the people. It provides buildings, hires teachers and employees generally, makes rules and regulations for governing the students, and administers the business of the 2-year junior college; it may, when necessary, acquire property by condemnation as most other public bodies may do, including levee districts, fire protection districts and drainage districts. The State Board of Education has supervisory control over the defendant district and all other junior college districts, § 178.780. That Board establishes the 'role' of all junior colleges, administers the 'state financial support porgram,' formulates uniform policies on 'budgeting, record keeping and student accounting,' establishes entrance requirements and 'uniform curricular offerings,' is responsible for all 'accreditation,' and it is required to 'supervise the junior college districts.' A junior college district, under our plan, has no power to do the multitude of things which a city or a county may do under its broad delegation of powers and its inherent powers." (A. 35).[2]

Certainly this analysis from Missouri's highest court regarding particular State statutes deserves the consideration and respect of this Court. *E.g., American Oil Company* v. *Neill*, 380 U.S. 451, 455-456 (1965); *Kingsley Corporation* v. *Regents of University of New York*, 360 U.S. 684, 688 (1959).

The duties and authority of the board of trustees of appellee Junior College District are "essentially administrative" and certainly "not legislative in the classical sense."

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2. Even the one dissenter to the majority opinion below acknowledged that a junior college district "is not primarily a legislative body exercising general governmental functions." (A. 39-40). And compare appellants' virtually bare assertion that appellee junior college district is not a "special-purpose" district and the alleged three characteristics of such a district (App. B. 12-13).

Sailors v. *Board of Education*, 387 U.S. 105, 110 (1967) (discussed *infra*, pp. 14-15). The powers granted are only those required to conduct a two-year junior college, and such powers are limited and circumscribed. Junior college district boards of trustees do not "legislate"; they do not pass laws. The trustees of a junior college district are elected, not to serve constituencies and advocate their interests in enacting legislation which will apply to all persons who live in the district, but to serve as administrators for the special and limited purpose of providing a two-year college education to certain high school graduates.

Apparently in an effort to obfuscate the true nature and limited powers of a special-purpose junior college district, appellants assert that its board of trustees has "broad legislative powers as to the affairs of the district," with the authority among other things "to levy and collect taxes" and "to issue bonds." (App. B. 10). But these are not unbridled statutory authorizations as appellants' brief would imply. As already pointed out in the Statement (*supra*, p. 5) and indicated in the Missouri Supreme Court decision quoted above, any annual tax levy in the Junior College District of Metropolitan Kansas City cannot exceed ten cents per $100 valuation unless voter approval is obtained. R.S.Mo. (1967 Supp.), § 178.870 (B. A. 11a).[3] And each bond issue by every school district, including appellee Junior College District, must under Missouri law be approved by two-thirds of the votes cast at

3. Compare this limited taxing authority with that of one of appellee's component bodies, the Kansas City School District, which by law has tax levying authority of $1.25 per $100 valuation before it must go to the electorate and an additional $2.50 per $100 which requires only majority voter approval. Two-thirds of the voters must approve a levy above $3.75. Mo. CONST., Art. X, §§11(b) and 11(c); R.S.Mo. (1967 Supp.), §164.021. That voter approval on school levy matters is far from perfunctory is indicated by the fact that on April 1, 1969 and again on May 20, 1969, the voters of the Kansas City School District failed to approve a $4.60 and then a $4.30 proposed levy. See *The Kansas City Times*, April 2, 1969 and May 21, 1969.

a bond election. *Id.*, § 164.151. To say that a Missouri junior college district has the power "to levy and collect taxes" and "to issue bonds" just does not present the complete picture.

Equally grievous in this area is appellants' assertion—without citing any authority—that a junior college board of trustees "is independent of municipal control of any city in which it is physically located, is not subject to city zoning laws and has the authority to maintain its own police and fire protection, as well as other functions comparable to a municipal government." (App. B. 10). Such statements fly in the face of the opinion below and simply are without foundation. While a Missouri school district cannot be prohibited via municipal ordinances from selecting and procuring by condemnation, if necessary, sites for public schools, *State* v. *Ferriss*, 304 S.W.2d 896, 902-903 (Mo. Sup. Ct. 1957), it has long been established in Missouri that school districts are not possessed of broad police powers but only with the limited power of public education. *E.g., Community Fire Protection District* v. *Board of Education*, 315 S.W.2d 873, 877 (Mo. Ct. App. 1958); *Bredeck* v. *Board of Education of City of St. Louis*, 213 S.W.2d 889, 894 (Mo. Sup. Ct. 1948); *Kansas City* v. *School District of Kansas City*, 201 S.W.2d 930, 933-934 (Mo. Sup. Ct. 1947). A school district is in no sense a municipal corporation with diversified powers, "but the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district," *State* v. *Gordon*, 133 S.W. 44, 51 (Mo. Sup. Ct. 1910). Moreover, a Missouri junior college district is not a general school district, charged with the huge educational task of providing basic education for thirteen years—kindergarten through the 12th grade—to that great mass of youngsters required to attend by the compulsory school attendance law. R.S.Mo. (1967 Supp.), § 167.031.

Its educational mission is markedly more limited, that of providing 13th and 14th year courses to those who voluntarily want to take them. In short, appellee District does not exercise general functions of government; it only operates a two-year junior college, and its powers and authority in doing so are notably limited and circumscribed.

In its brief as *amicus curiae*, the United States forthrightly acknowledges in its statement that "The basic function of the junior college districts is to supervise the operation of a program of two-year public education at the college level within their respective areas (see Mo. Rev. Stat., § 178.850)." (U.S. B. 6). The Government then candidly admits at the outset of its argument that "it should be noted that the instant case is somewhat atypical, in that the immediate subject is not the common type of independent school district found throughout the country, operating local elementary and secondary public schools within a specified geographic area." (U.S. B. 8).[4] Nonetheless, the Government continues, this case "at least potentially presents the broad issue" of whether "the equal population principle" applies to the "district-based election of school board members generally." (U.S. B. 8-9). And the Government proceeds to urge extendedly the across-the-board application of the "one-man, one vote" rule to all elected school boards.[5]

4. The Government further acknowledges the uniqueness of this particular case in later stating that "An extremely high percentage of school board members in this country are selected through the elective process—about 93 percent" and "Admittedly some 90 percent of those elected are elected at large, rather than from districts." (U.S. B. 23).

5. It is interesting to note that after thirty-seven pages of argument, including eight pages of urging "sound policy considerations" which the Government says favor application of the "equal-population principle to elected school boards" (U.S. B. 34-42), the United States ultimately alludes to the real issue here by urging in its conclusion that the "equal-population principle" is applicable to "the junior college district board of trustees involved in the instant case" (U.S. B. 42).

Appellees submit that the United States goes far afield from the particularities of this case, and that the instant unique situation involving a special-purpose junior college district in Missouri is not an appropriate springboard from which to take the leap the Government advocates. In other words, regardless of what the Government says with respect to "the common type of independent school district found throughout the country, operating local elementary and secondary public schools" (U.S. B. 8), the bulk of the arguments which the United States makes are just not appropriate in this matter involving what indisputably is a unique and limited special-purpose district operating a two-year junior college. For example, despite the "specific concern" of the United States regarding education and "various minority groups in this country which have long been the victims of discrimination" (U.S. B. 40), such discussion is wholly inapposite because in this case there is no suggestion whatsoever of any racial or other type of gerrymandering. Compare *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). This Court cannot and will not, appellees are confident, sidestep the particular facts and underlying State statutes of this case.

2. Being a special-purpose body with essentially administrative functions, appellee Junior College District of Metropolitan Kansas City is not a unit of local government "having general governmental powers over the entire geographic area served by the body," and accordingly the "one man, one vote" principle is not applicable under the decisions of this Court.

Needless to say, appellees do not quarrel with this Court's decisions in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and subsequent reapportionment cases involving State legislatures and their subdivisions. Appellees do insist, however, that under the special Missouri statutes and facts of this case, the "one man, one vote" requirement is not

applicable and that the decision below so holding is correct and consistent with those of this Court.

In *Avery* v. *Midland County*, 390 U.S. 474 (1968), this Court dealt of course with the Midland County, Texas Commissioners Court. The Court pointed out the "vast imbalance" of population among the four districts there involved, ranging from one with 67,906 to another with 414 persons, *id.*, at 476; noted that under the Texas Constitution and statutes, the Commissioners Court " 'is the general governing body of the county,' " *ibid.*; examined the statutory powers and authority of the Commissioners Court and observed that it is "representative of most of the general governing bodies of American cities, counties, towns and villages," *id.*, at 482;[6] and, after discussing *Reynolds* v. *Sims* and the Equal Protection Clause, held as follows:

---

6. Contrast the organizational and operational limitations of a Missouri junior college district, as summarized in the Statement above, with the description of the Midland County, Texas Commissioners Court as set forth in *Avery*:

> "The Commissioners Court is assigned by the Texas Constitution and by various statutory enactments with a variety of functions. According to the commentary to Vernon's Texas Statutes, the court:
>
> 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'
>
> The court is also authorized, among other responsibilities, to build and run a hospital, Tex. Rev. Civ. Stat. Ann., Art. 4492 (1966), an airport, *id.*, Art. 2351 (1964), and libraries, *id.*, Art. 1677 (1962). It fixes boundaries of school districts within the county, *id.*, Art. 2766 (1965), may establish a regional public housing authority, *id.*, Art. 1269k, § 23a (1963), and determines the districts for election of its own members, Tex. Const., Art. V, § 18." *Avery* v. *Midland County*, *supra*, at 476-477.

> "We hold today only that the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body." *Avery* v. *Midland County, supra,* at 484-485.

The Court then distinguished the previously decided cases of *Sailors* v. *Board of Education,* 387 U.S. 105 (1967), and *Dusch* v. *Davis,* 387 U.S. 112 (1967) (see discussion *infra,* p. 23), and reiterated its holding:

> "Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." *Avery* v. *Midland County, supra,* at 485-486.[7]

It is abundantly clear that this Court's holding in *Avery* was limited to a local governmental unit having "general governmental powers over the (an) entire geographic area." The Court said so twice, using the exact language just quoted. It is also altogether apparent, upon examination of the Missouri statutory scheme for a junior college district and its limited powers as reviewed above, that appellee Junior College District of Metropolitan Kansas City is not a body having "general governmental powers over the entire geographic area." It is not, to use other but similar language in *Avery,* "a unit of local government with general responsibility and power for local affairs." *Id.,* at 483. Accordingly, appellees submit, and notwithstanding appellants' and the United States' assertions to the contrary, *Avery* does not compel

7. Appellees do not feel it necessary to comment on appellants' and the United States' analyses of *Avery* except perhaps to observe that the former passes over the case lightly (App. B. 15) whereas the latter virtually dissects this Court's opinion to the point of obscuring the basic decision (U.S. B. 21-25).

the invalidation of Missouri's Section 178.820 in the instant case. Indeed, the fact that a Missouri junior college district is altogether distinguishable from a Texas Commissioners Court leads to the conclusion that a result here upholding constitutionality, opposite from that of *Avery* under its facts, is in order under that very decision.[8]

As compared with the Midland County, Texas Commissioners Court involved in *Avery*, a Missouri junior college district is actually more akin to a Kent County, Michigan Board of Education, the Board that, as this Court described it, "performs essentially administrative functions" which, while important, "are not legislative in the classical sense." *Sailors* v. *Board of Education*, 387 U.S. 105, 110 (1967).[9] In *Sailors*, of course, as subsequently

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8. Needless to say, in the instant cases there is no "substantially unequal" question like that involved in *Avery*, as appellants' concern over 59.49% of the school enumeration vis-a-vis 50% of the junior college trustees is a far cry from the *Avery* "vast imbalance" in district populations, from 67,906 to 414. The same can also be said regarding the instant situation as compared to the range from 201,777 to 99 in *Sailors* v. *Board of Education*, 254 F. Supp. 17, 18-19 (W.D. Mich. 1966), *aff'd*, 387 U.S. 105 (1967) (see p. 15, fn. 10, *infra*), and also the variance from 29,048 to 733 in *Dusch* v. *Davis*, 387 U.S. 112, 117 (1967) (see p. 10, *supra*), albeit there was no invalidation in these cases.

9. Compare the authority of a Missouri junior college district with the actually even broader powers of the Michigan County board of education described in *Sailors* as follows:

> "The authority of the county board includes the appointment of a county school superintendent (Mich. Stat. Ann., § 15.3298(1)(b) (Supp. 1965)), preparation of an annual budget and levy of taxes (Mich. Stat. Ann., § 15.3298(1)(c) (Supp. 1965)), distribution of delinquent taxes (Mich. Stat. Ann., § 15.3298(1)(d) (Supp. 1965)), furnishing consulting or supervisory services to a constituent school district upon request (Mich. Stat. Ann., § 15.3298(1)(g) (Supp. 1965)), conducting cooperative educational programs on behalf of constituent school districts which request such services (Mich. Stat. Ann., § 15.3298(1)(i) (Supp. 1965)), and with other intermediate school districts (Mich. Stat. Ann., § 15.3298(1)(j) (Supp. 1965)), employment of teachers for special educational programs (Mich. Stat. Ann., § 15.3298(1)(h) (Supp. 1965)), and establishing, at the discretion of the Board of Super-

summarized in *Avery, supra,* at 485, this Court "upheld a procedure for choosing a school board that placed the selection with school boards of component districts even though the component boards had equal votes and served unequal populations." Appellees accordingly submit that in the instant case, as was stated in *Sailors, supra,* at 111, "the principle of 'one man, one vote' has no relevancy," and thus that the Missouri statutory formula is not violative of equal protection.

It is true that in *Sailors, supra,* at 109, Mr. Justice Douglas relied in part upon the stated fact that "The Michigan system for selecting members of the county school board is basically appointive rather than elective."[10] But it is important that in referring to *Sailors* in the subsequent *Avery* decision, this Court said that there "The Court rested on the administrative nature of the area school board's functions and the essentially appointive form of the scheme employed." *Avery* v. *Midland County, supra,* at 485. Clearly, therefore, the "administrative nature" of a Missouri junior college district's functions is significant,

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visors, a school for children in the juvenile homes (Mich. Stat. Ann., § 15.3298(1)(k) (Supp. 1965)). One of the board's most sensitive functions, and the one giving rise to this litigation, is the power to transfer areas from one school district to another (Mich. Stat. Ann., § 15.3461 (1959))." *Sailors* v. *Board of Education,* 387 U.S. at 110, fn. 7.

A Missouri junior college district particularly has no such power as the last enumerated one of the Michigan county board of education because what limited authority a Missouri junior college district has in "pass[ing] on" (App. B. 7, U.S. B. 6) the annexation of another school district is dependent upon voter initiation and approval of the district proposed to be annexed. R.S.Mo. (1967 Supp.), § 178.890 (B.A. 12a-13a).

10. As explained in *Sailors,* the people of Kent County, Michigan elected the boards of the 39 local school districts, which had vast population differences between them, ranging from a low of 99 to a high of 201,777, and then each local board sent one delegate to the county meeting where five members of the county board of education were chosen, with each delegate voting once regardless of the size of his district. *Sailors* v. *Board of Education,* 254 F. Supp. 17, 18-19 (W.D. Mich. 1966), *aff'd,* 387 U.S. 105 (1967).

and appellants cannot wish *Sailors* away by unconvincingly urging that the instant factual situation "is totally different and distinguishable from the situation in *Sailors*" (App. B. 17). When *Sailors'* deference to "the administrative nature of the area school board's functions" (albeit this was one of two aspects of that opinion) is considered in light of *Avery's* subsequent emphasis on the body's having "general governmental powers over the entire geographic area," it can readily be seen that the decision of the court below is consistent with those of this tribunal. This is true, moreover, notwithstanding the Government's objection (U.S. B. 12-13) to the Missouri Supreme Court's statement regarding *Sailors* that "It appears to us that the non-legislative character of the board in *Sailors* was the determining factor" (A. 36). For even assuming arguendo the scuttling of this aspect of the decision below, there remains *Avery's* emphasis on the unit of local government having—what we do not have here with the Junior College District of Metropolitan Kansas City—"general governmental powers over the entire geographic area," on which of course the Missouri Supreme Court heavily relied.[11]

The false premise in the Government's thinking in this area is typified by the statement that "it is surprising that the court below—which had earlier held the equal-population principle applicable to the election of city council members in *Armentrout* v. *Schooler*, 409 S.W.2d 138

11. In this more important regard, the Missouri Supreme Court unassailably stated:

> "We hold that the defendant district is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution, and that it is *not* a "unit of local government having general governmental powers over the entire geographic area served by the body." Avery, supra. We further hold that the district has no substantial legislative functions or powers, a matter which has definitely been considered as meaningful in Sailors, supra, and in Avery at 20 L.Ed.2d loc. cit. 53, 54." (A. 36).

(Mo. Sup. Ct.)— . . . concluded that the equal-population principle was inapplicable to the election of school boards" (U.S. B. 20). The all-important difference between the two cases, which the Missouri Supreme Court recognized (A. 33) but the United States does not, is that the city council in *Armentrout* exercised "general governmental functions" with "broad legislative powers" and performed "primarily legislative functions importantly affecting the people," *Armentrout* v. *Schooler, supra,* at 143-144, whereas the junior college district involved here, in the Missouri Supreme Court's words as already pointed out (*supra,* p. 16, fn. 11), "is essentially an administrative body created by the legislature for the sole and special purpose of conducting a 2-year college institution" (A. 36). And, of course, there is the same basic distinction between *Avery* and the instant case, which the United States likewise refuses to acknowledge.[12]

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12. Appellees do not feel it necessary to discuss at length—as did the Government (U.S. B. 13-20)—the district court opinions in *Strickland* v. *Burns,* 256 F. Supp. 824 (M.D. Tenn. 1966) and *Delozier* v. *Tyrone Area School Board,* 247 F. Supp. 30 (W.D. Pa. 1965), or the Iowa Supreme Court's decision in *Meyer* v. *Campbell,* 152 N.W.2d 617 (Iowa Sup. Ct. 1967). As acknowledged by the United States, all three cases predate *Avery,* and the two federal decisions even predate *Sailors.* In view of *Avery's* definitive holding, such earlier decisions are not only not binding on this Court, but also are no longer particularly pertinent. Furthermore, those cases involved situations of "substantially unequal population," *Avery, supra,* at 485-486 (and see discussion *supra,* p. 14, fn. 8), as one district court opinion dealt with population variances from 10,110 to 455, *Strickland* v. *Burns, supra,* at 829, the other concerned a range from 2,876 to 410, *Delozier* v. *Tyrone Area School Board, supra,* at 32, and the Iowa case involved one area of 10,200 people which was "many more than in the other three areas which are fairly equal," *Meyer* v. *Campbell, supra,* at 619. More importantly, as observed by the Missouri Supreme Court below (A. 34), those cases made no distinction between the special entities there involved (*Strickland* and *Meyer* concerned county boards of education, *Delozier* a consolidated school district) and local governing bodies having general governmental powers and functions—the latter situation subsequently determined to be decisive in *Avery.* Moreover, those three decisions clearly did not deal with a junior college district such as the instant one, with a statutory percentage formula

3. Missouri's statutory percentage formula for electing junior college trustees is based upon school enumeration, not population, after a proposal to organize a junior college district is carried by majority vote at an at-large election; and such percentage formula, which reflects the statutory design of encouraging component school districts to join together and form a junior college district, is not invidious or arbitrary and accordingly does not violate the Equal Protection Clause.

In *Reynolds* v. *Sims*, 377 U.S. 533, 567 (1964), this Court stated that "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in *legislative* reapportionment controversies." (Emphasis added). But population need not be the controlling criterion where a special-purpose administrative body such as a junior college district is involved. Indeed, the Missouri system for allocation of trustees among the component school districts in a junior college district is expressly based upon school enumeration, and not population.

Prior to the 1961 enactment of the special statutes for junior college districts involved in this controversy (B.A. 1a-13a), Section 165.123 of the 1959 Missouri Revised Statutes had long provided as follows:

> "Any public school district in this state which now has or hereafter may have a fully accredited high school may provide for two-year college courses in such schools, on the approval of and subject to the supervision of the state board of education."

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based upon school enumeration for electing trustees from the component school districts. See discussion, *infra*, pp. 20-24.

As to other lower court cases cited by appellants (App. B. 7, 22), *Pitts* v. *Kunsman*, 251 F. Supp. 962 (E.D. Pa. 1966), was decided on State law grounds (see U.S. B. 13, fn. 6) and *Davis* v. *Dusch*, 361 F.2d 495 (4th Cir. 1966) was of course subsequently reversed by this Court (see discussion, *infra*, p. 23).

In 1960-61, there were seven public junior colleges in Missouri with a total enrollment of 5,232. State Board of Education, 112th Report of the Public Schools of the State of Missouri (School Year ending June 30, 1961).[13]

With obvious concern over this situation, the Missouri legislature enacted the broadened junior college statutes. As stated in *Three Rivers Junior College District* v. *Statler*, 421 S.W.2d 235, 237 (Mo. Sup. Ct. 1967):

> "All this was at a time when it was common knowledge that the demand and the need throughout the state for higher education called for expansion of public educational facilities. The legislature evidently believed one solution was to increase the size and capabilities of the junior college system, which until then had been limited to what could be offered by local districts in conjunction with their high schools, RSMo 1959, Sec. 165.123."

And as further noted in *Three Rivers*, "With the advent of the junior college district law most of the local junior colleges dropped out of existence or enlarged to form junior college districts and also several new junior college districts were formed." *Id.*, at 237, fn. 1. That the new legislative thrust was effective is reflected by the fact that in 1967-68, there were ten public junior colleges in Missouri, one of course being appellee Junior College District of Metropolitan Kansas City, with a total enrollment of 29,934—almost six times what it was just seven years before under the old system. State Board of Education, 119th Report of the Public Schools of the State of Missouri (School Year ending June 30, 1968).[14]

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13. This report is required of the State Board of Education by Missouri statute, R.S.Mo. (1967 Supp.), § 161.092.

14. Compare these tangible educational results under Missouri's enhanced junior college district system with appellants' and the United States' expressions regarding the general importance of education. (App. B. 8-9; U.S. B. 36-37).

With this general background in mind, it is appropriate now to consider the reasonableness of Missouri's junior college district statutes. At the outset of examining Section 178.820's percentage formula based upon school enumeration for electing junior college trustees, it is important to remember that ahead of selecting trustees, the voters of the entire proposed district must vote by majority ballot to organize a junior college district, comprised of particular component school districts. And in order to carry, the proposal "must receive a majority of the total number of votes cast thereon," with the results certified to the State Board of Education. R.S.Mo. (1967 Supp.), § 178.800 (B.A. 5a). There was such an election regarding the appellee junior college district on May 26, 1964, it will be recalled, and the voters then approved a proposed district consisting of eight component school districts, both urban and rural, covering 400 square miles. (See Statement, *supra*, p. 4; A. 17-18, 38).[15] Under-

15. The proposition submitted to the voters must be in substantially the following form under R.S.Mo. (1967 Supp.), § 178.800) (B.A. 4a):

"PROPOSITION

Shall there be organized within the area comprising the School Districts of _____, state of Missouri, a junior college district for the offering of 13th and 14th year courses, to be known as the Junior College District of _____, Missouri, having the power to impose a property tax not to exceed the annual rate of _____ cents on the one hundred dollars assessed valuation of taxable property without voter approval and such additional taxes as may be approved by vote thereon, as prayed in petition filed with the State Board of Education at Jefferson City, Missouri, on the _____ day of _____, 19____?

For organization _____
Against organization _____"

And, ahead of this, of course, there must first be a petition to so organize signed by sufficient voters and then a determination by the State Board of Education "that the area proposed to be included within the district meets the standards established by it under the provisions of sections 178.770 to 178.890." R.S.Mo. (1967 Supp.), § 178.800 (B.A. 3a-5a). See discussion of the statutory scheme in the Statement, *supra*, pp. 2-5.

lying the operation of Missouri's percentage formula for electing junior college district trustees, therefore, is the express approval and vote of the district electorate, upon an at-large ballot, to organize and establish a junior college district from the component school districts "for the offering of 13th and 14th year courses." R.S.Mo. (1967 Supp.), § 178.800 (B.A. 3a-5a).

Turning then to the "school enumeration" and percentage aspects of the Missouri statutory formula, it can be seen that there are good and plausible reasons for using school enumeration and also for allocating among the component school districts the trustees of a special-purpose junior college district.

School enumeration is an important and vital element in the operation and management of the Missouri public school system. As already noted (*supra*, footnote 1), Section 167.011 of the Missouri Revised Statutes requires each school district to take an enumeration of all persons therein between the ages of six and twenty years on an annual basis, prior to May 15 of each school year, with certain exceptions. School enumeration is the basis on which county school funds are apportioned among the school districts within a county. R.S.Mo. (1967 Supp.), § 166.161. Accordingly, it was altogether reasonable for the Missouri legislature to make school enumeration, rather than population, the basis in the statutory formula for electing from component school districts the junior college trustees, an administrative group with a special-purpose function. As stated in *Sailors*, *supra*, at 110-111:

> "Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation."

And again in *Avery, supra,* at 485:

> "This Court is aware of the immense pressures facing units of local government, and of the greatly varying problems with which they must deal. The Constitution does not require that a uniform strait-jacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems."[16]

Thus, how can there be any constitutional objection to the State of Missouri making school enumeration—the number of school-age children ascertained annually—its criterion in electing junior college district trustees? "Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs." *Sailors* v. *Board of Education, supra,* at 109.[17]

As to the percentage aspect of the Missouri formula, there can likewise be no valid objection. The percentage groupings might not achieve mathematical perfection in all cases when there are only six members of the board

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16. This Court spoke much earlier in a similar vein, as noted in *Sailors, supra,* at 109:

> "The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion, applied to the exigencies of the state as they arise. It is the science of experiment." *Anderson* v. *Dunn,* 19 U.S. (6 Wheat.) 204, 226 (1821).

17. Under the instant Missouri statute setting forth a percentage formula for electing junior college trustees based on school enumeration, all qualified voters get to vote, and thus there is no problem of disenfranchisement such as was involved in *Kramer* v. *Union Free School District No. 15,* 282 F. Supp. 70 (E.D. N.Y. 1968), *rev'd,* No. 258, this Term (decided June 16, 1969). As recognized by the United States even before its reversal, *Kramer* is a voting, not an apportionment, case, and this Court's recent decision is not dispositive in the instant case. (See U.S. B. 32, fn. 16.)

to be elected from the total area[18] and when the formula is also related to the boundary lines of the component school districts. *Cf. Dusch* v. *Davis*, 387 U.S. 112 (1967), where, as stated in *Avery, supra*, at 485, this Court "permitted Virginia Beach to choose its legislative body by a scheme that included at-large voting for candidates, some of whom had to be residents of particular districts, even though the residence districts varied widely in population." Here, again, there is a rational basis for the Missouri legislature doing what it did as to a special-purpose junior college district. The percentage aspect of the election method encourages individual school districts to join together to form a junior college district—without their being swallowed up and losing all trustee representation to the larger school districts—and promotes the growth and development of the junior college system. Straight elections at large, as advocated by appellants, would do the opposite. See *Dusch* v. *Davis, supra*, at 117:

> "The Seven-Four Plan seems to reflect a detente between urban and rural communities that may be important in resolving the complex problems of the modern megalopolis in relation to the city, the suburbia, and the rural countryside."

Despite appellants' assertions to the contrary, with the special-purpose nature of a junior college district, there is certainly nothing invidious or arbitrary about Missouri's statutory percentage formula, notwithstanding some variance from absolute mathematical norms. "The Equal Protection Clause does not, of course, require that the State never distinguish between citizens, but only that the distinctions that are made not be arbitrary or invid-

18. See Pock, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS (1962), p. 158 et seq., indicating that experience with existing metropolitan districts demonstrates the advisability of small, workable governing boards.

ious." *Avery* v. *Midland County, supra,* at 484. As stated in *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 527 (1959): "The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.'" Like the school enumeration part of the statutory formula, therefore, the percentage aspect has "a fair and substantial relation to the object of the legislation"—in this instance the encouraging of various and oftentimes diverse component school districts to join together and form a junior college district, for the better education of Missouri youth.[19] Certainly, such a statutory design, with the notable results which have come about (see discussion, *supra,* p. 19), is far from invidious or arbitrary.[20]

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19. In *Allied Stores,* 358 U.S. at 528, this Court stated:

"We cannot assume that state legislative enactments were adopted arbitrarily or without good reason to further some legitimate policy of the State. What were the special reasons, motives or policy of the Ohio Legislature for adopting the questioned proviso we do not know with certainty, nor is it important that we should, *Southwestern Oil Co.* v. *Texas,* 217 U.S. 114, 126, for a state legislature need not explicitly declare its purpose."

The Court nevertheless went on to say that "it is obvious that it may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso, to encourage the construction or leasing and operation of warehouses in Ohio by nonresidents with the attendant benefits to the State's economy," or similar purposes, and thus that "it cannot be said . . . that the questioned proviso was invidious or palpably arbitrary." *Id.,* at 528-529. Similarly here, it is obvious that "it may reasonably have been the purpose and policy" of the Missouri legislature to encourage various and diverse school districts—each with its own natural reluctance to give up control and authority—to join together on a statutory assured-representation basis to form a junior college district. Compare the Government's argument (U.S. B. 34) that "there was no showing here that arguably rational differences among citizens . . . played any role in the shaping of the Missouri statute here challenged."

20. *Cf.* Mr. Justice Harlan's dissenting opinion in *Avery, supra,* at 493-494, where in commenting about "the crucial field of Metropolitan government," he speaks of the less affluent citizens living within the central city while the more affluent move

In *Avery* v. *Midland County, supra,* at 483-484, this Court stated:

> "Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions."

Here we have a statutory formula based on school enumeration which takes into account those most affected by the special-purpose junior college district's functions—the prospective students in each component school district. Surely, this cannot be a denial of equal protection.

A fallacy in appellants' argument in this whole area is that they tend to equate the term "school enumeration" with "population" and/or "voters." They argue that because the school enumeration of the Kansas City School District is larger than that of the other component school districts within the junior college district, the voters of the Kansas City School District are discriminated against in only being able to elect one-half of the six trustees. Appellees submit that there is no necessary connection or absolute mathematical relationship between the number of persons of student age in a school district and the number of people or voters in the same school district. The Mis-

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to the suburbs to live and work only in the city, says that "An oft-proposed solution to these problems has been the institution of an integrated government encompassing the entire metropolitan area," points out that in many instances such a metropolitan unit requires suburb voter approval, and then states:

> "As a practical matter, the suburbanites often will be reluctant to join the metropolitan government unless they receive a share in the government proportional to the benefits they bring with them and not merely to their numbers. The city dwellers may be ready to concede this much, in return for the ability to tax the suburbs."

souri statute allocating junior college trustees on the basis of certain school enumeration percentages could not alone be held unconstitutional on the basis that the *voters* in one district are discriminated against, even assuming *arguendo* that the "one man. one vote" principle is applicable to school districts under certain circumstances.

A final word is in order as to special-purpose governmental units. While the number of independent school districts is declining (U.S. B. 24, fn. 11 and Bureau of the Census statistics there cited),[21] other special purpose units of government are "the fastest growing category of local government." McKay, *Reapportionment and Local Government*, 36 Geo. Wash. L. Rev. 713, 731 (1968). From 1962 to 1967, special districts other than school districts increased in number from 18,323 to 21,264.[22] In Missouri, at the present time, there apparently are twenty-eight different types of special governmental units, other than school districts. Newsom, SPECIAL DISTRICTS IN MISSOURI. Unlike "school boards across the country" (U.S. B. 33) which are similar in operating local elementary and secondary public schools, other special purpose governmental units are of multitudinous sorts and sizes.[23] Thus, when it comes right down to it, appellee Junior College District of Metropolitan Kansas City is far more a unique and dif-

21. It is interesting to note that out of the 23,390 public school systems in this country in 1967 (see U.S. B. 24, fn. 11), only 407 of them provided college-grade coverage. Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, "Public School Systems in 1966-67" (Preliminary Report dated November, 1967), p. 4.

22. Dept. of Commerce, Bureau of the Census, 1967 Census of Governments, "Governmental Units in 1967" (Preliminary Report dated October, 1967), p. 1.

23. See, Bollens and Schmandt, THE METROPOLIS (1965), p. 172 and generally; Pock, INDEPENDENT SPECIAL DISTRICTS: A SOLUTION TO THE METROPOLITAN AREA PROBLEMS (1962); Bollens, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES (1957).

ferent special-purpose governmental unit than it is the common type of school district. A rigid application of the "one man, one vote" principle in the instant case, accordingly, would have a detrimental and "straitjacket" effect on all non-school special-purpose bodies of government. As succinctly stated in *Avery, supra*, at 485, the Constitution and this Court should not be "roadblocks in the path of innovation, experiment, and development among units of local government."

CONCLUSION

For the foregoing reasons, it is submitted that the Missouri legislature was well within its discretion in providing for apportionment of junior college trustees under a percentage formula based on the school enumeration of the component school districts. Appellees accordingly urge that the decision below of the Missouri Supreme Court should be affirmed.

Respectfully submitted,

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APPENDIX

Revised Statutes of Missouri (1967 Supplement)
Sections 178.770 Through 178.890
Regarding
Junior College Districts

JUNIOR COLLEGE DISTRICTS

178.770. Organization of junior college districts—standards—corporate powers of districts.—1. In any public school district, or in any two or more contiguous public school districts in this state, whether in the same county or not, the voters resident therein may organize a junior college district in the manner hereinafter provided. Prior to the organization of a district under sections 178.770 to 178.890, the state board of education shall establish standards for the organization of the districts which shall include among other things:

(1) Whether a junior college is needed in the proposed district;

(2) Whether the assessed valuation of taxable, tangible property in the proposed district is sufficient to support adequately the proposed junior college; and

(3) Whether there were a sufficient number of graduates of high school in the proposed district during the preceding year to support a junior college in the proposed district.

2. When a district is organized, it shall be a body corporate and a subdivision of the state of Missouri and shall be known as "The Junior College District of ....., Missouri" and, in that name, may sue

and be sued, levy and collect taxes within the limitations of sections 178.770 to 178.890, issue bonds and possess the same corporate powers as common and six-director school districts in this state, other than urban districts, except as herein otherwise provided. (L. 1963 p. 200 §13-77) Effective 7-1-65 (Source: L. 1961 p. 357 §1).

178.780. State board to supervise colleges—duties.—1. Tax supported junior colleges formed prior to October 13, 1961, and those formed under the provisions of sections 178.770 to 178.890 shall be under the supervision of the state board of education.

2. The state board of education shall:

(1) Establish the role of the two-year college in the state;

(2) Set up a survey form to be used for local surveys of need and potential for two-year colleges; provide supervision in the conducting of surveys; require that the results of the studies be used in reviewing applications for approval; and establish and use the survey results to set up priorities;

(3) Require that the initiative to establish two-year colleges come from the area to be served;

(4) Administer the state financial support program;

(5) Supervise the junior college districts formed under the provisions of sections 178.770 to 178.890 and the junior colleges now in existence and formed prior to October 13, 1961;

(6) Formulate and put into effect uniform policies as to budgeting, record keeping, and student accounting;

(7) Establish uniform minimum entrance requirements and uniform curricular offerings for all junior colleges;

(8) Make a continuing study of junior college education in the state; and

(9) Be responsible for the accreditation of each junior college under its supervision. Accreditation shall be conducted annually or as often as deemed advisable and made in a manner consistent with rules and regulations established and applied uniformly to all junior colleges in the state. Standards for accreditation of junior colleges shall be formulated with due consideration given to curriculum offerings and entrance requirements of the University of Missouri. (L. 1963 p. 200 §13-78) Effective 7-1-65 (Source: L. 1961 p. 357 §2).

178.790. Boundaries of districts.—The boundaries of any junior college district organized under sections 178.770 to 178.890 shall coincide with the boundaries of the school district or of the contiguous school districts proposed to be included, and the junior college district shall be in addition to any other school districts existing in any portion of the area. (L. 1963 p. 200 §13-79) Effective 7-1-65 (Source: L. 1961 p. 357 §3).

178.800. Petition to establish district—election on proposal.—Whenever a petition, signed by voters in each component school district within a proposed junior college district area, equal in number to five per cent of the number of votes cast for the director receiving the greatest number of votes within each component school district at the last preceding school election in each school district at which a director was elected, is presented to the state board of education, praying that a junior college district be organized for the purpose of offering junior college (13th and 14th year) courses, if the state board of education determines that the area proposed to be included within the district meets the standards estab-

lished by it under the provisions of sections 178.770 to 178.890, it shall order an election held within the proposed district to vote on the proposal and to elect trustees, at the next following annual school election or meeting. If annual school elections of component school districts within a proposed junior college district area are not held on the same date, the state board of education shall set the date for the organization election. At the election, the proposition shall be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of ....., state of Missouri, a junior college district for the offering of 13th and 14th year courses, to be known as the Junior College District of ....., Missouri, having the power to impose a property tax not to exceed the annual rate of ..... cents on the one hundred dollars assessed valuation of taxable property without voter approval and such additional taxes as may be approved by vote thereon, as prayed in petition filed with the State Board of Education at Jefferson City, Missouri, on the ..... day of ....., 19....?

For organization .....

Against organization .....

The election shall be conducted in the manner provided under the school law. Within fifteen days after the election, the results shall be transmitted by those receiving them under law in each component district to the state board of education, by certificates attesting to the total number of votes cast within each district on the proposition, the votes cast for and against the proposition and the votes cast for each candidate for trustee, together

with the tally sheets attested to by the judges and clerks of election at each polling place within each district. The proposal to organize the junior college district, to carry, must receive a majority of the total number of votes cast thereon and the secretary of the state board of education, from the results so certified and attested, shall determine whether the proposal has received the majority of the votes cast thereon and shall certify the results to the state board of education. If the certificate of the secretary of the state board of education shows that the proposition to organize the junior college district has received a majority of the votes cast thereon, the state board of education shall make an order declaring the junior college district organized and cause a copy thereof to be recorded in the office of recorder of deeds in each county in which a portion of the new district lies. If the proposition carries, the board shall also determine which candidates have been elected trustees under section 178.820. If the proposition to organize the district fails to receive a majority of the votes cast thereon, no tabulation shall be made to determine the candidates elected trustees. (L. 1963 p. 200 §13-80) Effective 7-1-65 (Source: L. 1961 p. 357 §4).

178.810. Notice of election—election conducted, how. —1. Notice of the organization election shall be given by the state board of education by publication in at least one newspaper of general circulation in each county including any portion of the proposed junior college district, and within each city not in a county within the proposed district, once a week for three consecutive weeks, the last insertion to be no longer than one week prior to the date of election.

2. The election shall be conducted in the same manner, at the same polling places and by the same election

officials who are conducting elections on that day in each component school district. If there is no school election conducted on that day in a component school district within the proposed junior college district, then for that component school district the polling places and the judges and clerks of election shall be selected and the election conducted in the same manner and by the same board or body that selects judges and clerks and conducts elections in that component district. (L. 1963 p. 200 §13-81) Effective 7-1-65 (Source: L. 1961 p. 357 §6).

178.820. Trustees elected at large or from component districts—terms—qualifications.—1. In the organization election six trustees shall be elected at large, except that if there are in the proposed junior college district one or more school districts with more than thirty-three and one-third per cent and not more than fifty per cent of the total school enumeration of the proposed district, as determined by the last school enumeration, then each such district shall elect two trustees and the remaining trustees shall be elected at large from the remainder of the proposed district. If any school district has more than fifty per cent and not more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then three trustees shall be elected at large from such school district and three trustees at large from the remainder of the proposed district. If any school district has more than sixty-six and two-thirds per cent of the total school enumeration of the proposed district then four trustees shall be elected at large from such school district and two trustees elected at large from the remainder of the proposed district. If the trustees are elected at large throughout the entire proposed district, the two receiving the greatest number of votes shall be elected for terms of six years each, the two receiving the next greatest number of votes, for terms of four years

each, the two receiving the next greatest number of votes, for terms of two years each. If the trustees are elected in any manner other than at large throughout the entire proposed district, then the trustees elected shall determine by lot the two who shall serve for six years, the two who shall serve for four years and the two who shall serve for two years. The period of time between the date of the organization election and the date of the first regular election of the junior college district is considered a full two years in the terms of the directors. Thereafter, all trustees elected shall serve for terms of six years each.

2. Candidates for the office of trustee shall be citizens of the United States, at least thirty years of age who have been resident taxpayers of the proposed district for at least one whole year preceding the election and if trustees are elected other than at large they shall be resident taxpayers of those election districts for at least one whole year next preceding the election. All candidates for the first board of a district shall file their declarations of candidacy with the state board of education at least thirty days prior to the date of the organization election. (L. 1963 p. 200 §13-82) Effective 7-1-65 (Source: L. 1961 p. 357 §5).

178.830. Board of trustees—oath—officers—quorum—vacancies filled, how—seal.—Newly elected members of the board of trustees shall qualify by taking the oath of office prescribed by article VII, section 2*, of the constitution of Missouri. The board shall organize by the election of a president, and vice-president, a secretary and a treasurer. The secretary and treasurer need not be members of the board. A majority of the board

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*Note: Probably should be 11.

constitutes a quorum for the transaction of business, but no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the whole board votes therefor. Any vacancy occurring in the board shall be filled by appointment by the remaining members of the board, and the person appointed shall hold office until the next election held by the junior college district when a trustee shall be elected for the unexpired term. The board shall keep a common seal with which to attest its official acts. (L. 1963 p. 200 §13-83) Effective 7-1-65 (Source: L. 1961 p. 357 §7).

178.840. Regular district elections—notice—filing of candidates—certification of results—special elections on bond issues.—1. After organization, the voters of the junior college district shall vote for trustees and on all other propositions provided by law for submission at school elections which are applicable to junior college districts. Regular elections in junior college districts shall be held at the following times:

(1) If a component district holds its elections on the first Tuesday after the first Monday in April in the years propositions must be voted upon in the junior college district, then elections in the junior college district shall be held at that time in each component district.

(2) In all other junior college districts elections shall be held on the first Tuesday in April in the years propositions must be voted upon.

2. Elections in junior college districts shall be conducted as provided in subsection 2 of section 178.810, except that in any junior college district wherein by subdivision (2) of subsection 1 elections are held on the first Tuesday in April and all trustees are not to be elected at large, no election shall be held in a component district solely for the purpose of electing trustees of the

junior college district and any trustee elected from such a component district whose term would normally expire in a year in which no regular school district election would be held in the component district shall continue to hold office until the next regular election in the component district at which time his successor shall be elected for a term of six years. All costs incident to elections shall be borne by the junior college district. Notice of elections shall be given by the board of trustees by publication in at least one newspaper of general circulation within each county, and within each city not in a county within the district, at least once a week for three consecutive weeks, the last insertion to be no longer than one week prior to the date of election. If trustees are elected other than at large throughout the entire district, then only those voters within the election district from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that district. All candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees at least thirty days prior to the date of election. If voting machines are not used in a component district, then the board of trustees shall cause ballots to be printed and distributed for the polling places in the component districts at the expense of the junior college district.

3. The secretary of the board of education, district clerk or the board of election commissioners, as the case may be, in each component school district, shall certify to the board of trustees of the junior college district the total number of votes cast for each candidate and the votes cast on all questions submitted within fifteen days after any election. Within forty-eight hours thereafter, at least a majority of the then qualified members of the board of trustees of the junior college district shall jointly tabulate the results so received, shall declare and certify the candi-

dates receiving the greatest number of votes for terms of six years each and until their successors are elected and qualified and shall declare and certify the results of the votes cast on any question presented at the election.

4. Anything in the foregoing provisions of this section to the contrary notwithstanding, any junior college district may call a special election on a proposal to borrow money and issue bonds for any lawful purpose. The special election shall be held on the date to be specified in the call, and notice thereof shall be given and the special election shall be held in the manner provided by the law governing such elections in six-director school districts. (L. 1963 p. 200 §13-84 and p. 346 §165.813, A. L. 1967 S. B. 82) Effective 8-1-67 (Source: L. 1961 p. 357 §8).

178.850. District to provide college courses—per capita cost to be determined—tuition charges.—A junior college district organized under sections 178.770 to 178.890 shall provide instruction, classes, school or schools for pupils resident within the junior college district who have completed an approved high school course. The board of trustees of the district shall determine the per capita cost of the college courses, file the same with the state board of education and, upon approval thereof by the state board of education, shall require of all non-residents who are accepted as pupils a tuition fee in the sum that is necessary for maintenance of the college courses. In addition thereto, the board may charge resident pupils the amounts that it deems necessary to maintain the college courses, taking into consideration the other funds that are available under law for the support of the college courses. (L. 1963 p. 200 §13-85) Effective 7-1-65 (Source: L. 1961 p. 357 §9).

178.860. Board to appoint employees—fix compensation—teachers to be members of public school retirement

system.—The board of trustees shall appoint the employees of the junior college, define and assign their powers and duties and fix their compensation. All certificated personnel shall be members of the public school retirement system of Missouri under provisions of section 169.010, RSMo. (L. 1963 p. 200 §13.86) Effective 7-1-65 (Source: L. 1961 p. 357 §10).

178.870. Tax rate limits—how increased.—Any tax imposed on property subject to the taxing power of the junior college district under article X, section 11(a) of the constitution without voter approval shall not exceed the annual rate of ten cents on the hundred dollars assessed valuation in districts having one billion dollars or more assessed valuation; twenty cents on the hundred dollars assessed valuation in districts having five hundred million dollars but less than one billion dollars assessed valuation; thirty cents on the hundred dollars assessed valuation in districts having one hundred million dollars but less than five hundred million dollars assessed valuation; forty cents on the hundred dollars assessed valuation in districts having less than one hundred million dollars assessed valuation. Increases of the rate with voter approval shall be made in the manner provided in chapter 164, RSMo, for school districts. (L. 1963 p. 200 §13-87) Effective 7-1-65 (Source: L. 1961 p. 357 §11).

178.880. Taxation of public utility property—rate not included in determining rate to be levied by other school districts.—All real and tangible personal property owned by railroads, street railways, boats, vessels, bridge companies, telegraph companies, electric light and power companies, electric transmission line companies, pipe line companies, express companies, air line companies and other companies and public utilities whose property is assessed by the state tax commission shall be taxed at the

same rate of taxation which is levied on other property in the junior college district in the same manner and to the same extent that the property is subject to assessment and taxation for general county purposes, and all of the provisions of chapters 151, 153, 154 and 155, RSMo, shall apply to taxation by junior college districts to the same extent as if the junior college districts were specifically included in the provisions contained in chapters 151, 153, 154 and 155, RSMo, except that the taxes levied by junior college districts shall not be included for the purpose of determining the average school levy for the other school districts in the county in which they are situated. The taxes levied against the property by junior college districts shall be collected in the same manner as taxes are collected on the property from general county taxes. (L. 1963 p. 200 §13-88) Effective 7-1-65 (Source: L. 1961 p. 357 §12).

178.890. Annexation of school districts—new junior college district formed, when—refusal without cause of petition to annex, penalty.—1. If the area of an entire school district which adjoins a junior college district organized under sections 178.770 to 178.890 desires to be attached thereto and become a part of the junior college district it may do so in the manner provided for annexation under section 162.441, RSMo. If the area of an entire school district which adjoins a district offering a two-year college course under section 178.370 on October 13, 1961, and receiving aid under section 163.191, RSMo, desires to be attached thereto for junior college purposes only, the annexation shall be completed under section 162.441, RSMo, and upon the annexation, a special junior college district shall be established in the entire area as provided in sections 178.770 to 178.890, and notice thereof shall be given to the state board of education. The state board of education, within sixty days, shall call a special election for the election of trustees to be conducted in the manner provided in sections 178.810 and 178.820.

2. If the board of trustees of the receiving district rejects the petition for annexation, the state board of education may be petitioned for a hearing and upon receipt of the petition the state board shall establish the time and place and proceed to a hearing. If the state board of education finds that refusal to honor the petition for annexation has been made without good cause, the state board in its discretion may withhold a portion or all of the state aid from the district which is payable under the provisions of section 163.191, RSMo. (L. 1963 p. 200 §13-89) Effective 7-1-65 (Source: L. 1961 p. 357 §15).

INDEX

Citations

CASES:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 938

DELLA HADLEY, et al.,
Appellants,

v.

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, et al.,
Appellees

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF APPELLEE, ATTORNEY GENERAL OF MISSOURI

STATEMENT

We consider the statement of the case by appellants and compliance with Rule 40, paragraph 1, subparagraphs (a), (b), (c) and (d) to be sufficient, and we will not restate these matters in this brief.

SUMMARY OF ARGUMENT

Two federal district courts and the Supreme Court of Iowa have applied the equal representation rule of *Reynolds* v. *Sims,* 377 U.S. 533, to local or county school districts. These decisions, rendered prior to *Avery* v. *Midland County,* 390 U.S. 474, have failed, however, to consider the differences between the special purpose government units and general government units. Further, the Supreme Courts of Pennsylvania and Missouri have concluded that the equal representation rule does not apply to school districts.

In *Sailors, et al.* v. *Board of Education of the County of Kent, et al.,* 387 U.S. 105, and *Avery* v. *Midland County,* supra, this Court set forth the principle that the equal representation rule only applies where the local governmental unit has general governing powers over the entire geographic area served. This Court has not extended the Reynolds rule beyond municipalities such as counties.

The Junior College District of Metropolitan Kansas City is a local governmental unit with limited special purpose powers. With the exception of the power to tax, its powers are practically the same as any private corporate junior college. In contrast to counties and cities, it does not make, enforce or adjudicate laws and it does not exercise the police power of the state. Its governmental functions, though very important, are limited to operating an educational institution. It is not in the sense defined in Avery a unit of local government having general governmental powers.

Thus, this court should affirm the decision of the Missouri Supreme Court holding that the Reynolds rule does not apply to the election of trustees by Missouri junior college districts.

ARGUMENT

I.

Decisions of state and lower federal courts are in disagreement as to the application of the equal representation rule to school districts. Those decisions which apply the doctrine to school units fail to consider the difference between special purpose government units and general governing units.

The Supreme Court of Missouri in the instant case held that Missouri junior college districts were not a unit of local government having general governmental powers over the entire geographic area served by the body and thus the equal representation doctrine did not apply to the election of trustees of the district. *Hadley, et al.* v. *Junior College District of Metropolitan Kansas City, et al.*, Mo., 432 S.W.2d 328.

In a very brief opinion the Supreme Court of Pennsylvania held, ". . . taxpayers or other citizens [do not have] . . . any Constitutional or other right to proportionate representation on school boards. . . ." *Montella, et al.* v. *Camillo, et al.*, Pa., 228 A.2d 775, 777.

Both the Pennsylvania and Missouri cases directly dealt with school boards. Both courts found that the equal representation doctrine was not applicable to public school districts. The Missouri case is the only decision subsequent to this Court's opinion in *Avery* v. *Midland County, et al.*, 390 U.S. 474.

Appellants, in support of their position, have presented to this Court the cases of *Strickland, et al.* v. *Burns,*

et al., D.C. Tenn., 256 F.Supp. 824; *Delozier, et al.* v. *Tyrone Area School Board*, D.C. Pa., 247 F.Supp. 30; and *Meyer, et al.* v. *Campbell, et al.*, Iowa, 152 N.W.2d 617. All of these cases were decided prior to this Court's decision in *Avery* v. *Midland County, et al.*, supra. *Strickland* and *Delozier* were decided prior to this Court's decision in *Sailors, et al.* v. *Board of Education of the County of Kent, et al.*, 387 U.S. 105.

Of these cases, only *Delozier* deals with a school board. *Meyer* and *Strickland* involve county boards of education, a governing entity of broader jurisdiction.

The Federal District Court in *Delozier* applied the equal representation doctrine to a public school district. The court there stated (247 F.Supp. 30, 35), ". . . While school boards are subject to numerous limitations in the exercise of local powers, these limitations are no less in scope or variety than the limitations imposed on other governmental subdivisions or municipal corporations. The encroachment of state control and the extent and variety of state financial aid extends to all forms of political subdivisions in the state as well as to school boards."

The authorities cited by the District Court in support of its decision do not deal with special governmental entities but rather concern local governmental units having broad general governmental functions, namely, city councils, county courts and township boards. Delozier, supra, l.c. 36.

The District Court in *Delozier* obviously threw all local governmental entities in the same category without consideration of the nature or functions of the unit of government, without distinguishing between school districts and other special purpose districts and general governing units. With one broad indiscriminate stroke the

court applied the equal representation doctrine to every unit of local government.

The District Court in *Strickland, et al.* v. *Burns, et al.*, D.C. Tenn., 256 F.Supp. 824 (1966) also indiscriminately applied the equal representation doctrine to all units of local government. The court's decision is simply premised as follows, l.c. 826: ". . . the rationale of the *Reynolds* decision . . . is logically as applicable to the backwaters of representative government at the local level as to the fountainhead of representative government at the state level."

The Supreme Court of Iowa in *Meyer, et al.* v. *Campbell, et al.*, Iowa, 152 N.W.2d 617, also applied the equal representation doctrine without consideration of the variety of natures and functions of local governmental units. The court there applied the doctrine to an elected county board of education. The decision was founded on the premise that (l.c. 621) ". . . any inferior *elective* body, that is representative of the people, [must] be representative of all the people equally. . . ."

The court in *Meyer* discussed this Court's opinion in *Sailors* and concluded that this Court did not apply the equal representation doctrine in that case because the members of the county board of education were appointed rather than elected. The Iowa court stated, l.c. 623:

> ". . . it is reasonable to believe that where the legislature chooses to submit the selection of an official or board to the electorate, it is of no consequence whether its functions affecting the personal and property rights of the people are administrative or legislative. . . ."

We are of the view that the Iowa court erroneously interpreted the Sailors opinion in that it gave undue

weight to form rather than substance and that the application of the equal representation doctrine should depend upon the nature and functions of the governmental entity and not upon the manner by which its officers are selected. In Point II we will discuss *Sailors*.

The Delozier, Strickland and Meyer decisions would indiscriminately apply the equal representation doctrine to every drainage, fire protection, health, levee, road, sewer, etc., etc., special purpose district. We are of the view that the doctrine is better applied upon consideration of the particular nature and functions of the governmental unit in question.

II.

The equal representation doctrine is applicable to units of local government only when they have general governmental powers over the entire geographic area served by the body. The doctrine is not applicable to special purpose districts such as junior college districts. This principle is set forth in this Court's decisions in Sailors and Avery.

In *Sailors, et al.* v. *Board of Education of County of Kent, et al.*, 387 U.S. 105, this Court refused to apply the equal representation doctrine to a county board of education stating that it ". . . performs essentially administrative functions, and while they are important, they are not legislative in the classical sense." l.c. 110. The court further took note of the "basically appointive rather than elective" means of electing the members of the county board of education.

The respective population and representation of the election districts in *Sailors* were set down in the District Court's opinion (254 F.Supp. 17), as follows: Each school district within the county had one vote on the county

board. The Grand Rapids School District had a population of 201,777. Some of the other school districts had a population of 99, 111, 117 and 145. Grand Rapids had 55.6% of the population of the county. There were 39 school districts in the county. Nevertheless, Grand Rapids had only 1 vote on the county board. The relative voting power between Grand Rapids and the other districts was about 200 to 1. *Factually there was gross inequity in representation.*

If we assume that this Court in *Sailors* refused to apply the equal representation doctrine because the members of the board were not directly elected, then we may assume that a state may evade the constitutional requirements of equal representation merely by providing a two-step system of election. In the present case elementary and secondary public school districts form components of the junior college district. These component school districts also serve as election districts under Section 178.820, RSMo Supp. 1967. If the state legislature had provided that junior college district trustees would be elected by the members of the boards of education of the component school districts rather than by direct popular election, we would have a factual situation identical to that presented in *Sailors*. If appointive rather than elective selection were the criteria, then the two-step method would be constitutional regardless of the degree of unequal representation!

We are of the view that a rule applying the equal representation doctrine based upon whether or not the election is direct or two-step would give greater weight to form than to substance. It is more reasonable to apply or not apply the equal representation doctrine on the basis of the nature and function of the governmental units

than to apply or not apply the doctrine based upon the procedures of selecting representatives. If the people are significantly affected and vitally interested in a unit of local government and if they would be detrimentally affected by governing representatives who did not proportionately represent the population, then these interests would be important, vital and worthy of constitutional protection regardless of the procedure for selecting the governing representatives.

We are of the view that the special purpose, nonlegislative character of the county board of education was the determining factor in Sailors rather than the two-step appointive manner of selection.

In *Avery* v. *Midland County, et al.*, 390 U.S. 474, this Court considered the application of the equal representation doctrine to a county commissioner's court. This Court looked to the nature and function of that unit of local government. Those functions were described by quoting from a comment of Vernon's Annotated Texas Statutes, Constitution, Article V, Section 18 (1955) as follows, *Avery*, supra, 476: "[The commissioner's court] 'is the general governing body of the county. It establishes a courthouse and jail, appoints numerous minor officials such as the county health officer, fills vacancies in the county offices, lets contracts in the name of the county, builds roads and bridges, administers the county's public welfare services, performs numerous duties in regard to elections, sets the county tax rate, issues bonds, adopts the county budget, and serves as a board of equalization for tax assessments.'" This Court also found that the county commissioner's court was also authorized to build and run a hospital, an airport, to fix school district boundaries and to establish regional public housing au-

thorities. Although Midland County, as many counties, had numerous officials who were selected by direct popular election, it is noted that the county commissioner's court possessed the taxing and budget powers and thus had a strong method of control of all county offices. This Court found (l.c. 484) ". . . that the powers of the Commissioner's Court include the authority to make a substantial number of decisions that affect all citizens. . . ."

This Court held, *Avery*, supra, 484, 485, ". . . the Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body."

It is clear that this Court has rejected the indiscriminate application of the equal representation doctrine to all units of local government as had been made by the courts in *Delozier, Strickland* and *Meyer*.

One obiter dicta statement by this Court in the Avery decision warrants discussion. The majority opinion contains the following statement, l.c. 480, ". . . If voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, *school board*, or county governing board are elected from districts of substantially unequal population. . . ." (Emphasis added)

It would seem that the court by dicta has indicated that the equal representation doctrine applies to school boards. We are of the view that a reading of the entire opinion compels the conclusion that the insertion of the words school board in the above-quoted sentence is a misprision and not the opinion of this Court. Although the Avery opinion frequently mentioned cities, towns and

counties in a similar context as at page 480, school boards are not mentioned any other time. We do not believe that school boards fit within the description expressed in the court's holding, that is, "units of local government having general governmental powers over the entire geographic area served by the body."

In every other place throughout the Avery opinion where this court lists types of local governmental units school boards are not included in the list. For example, at page 480, ". . . A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech. . . ." At page 481, ". . . We therefore see little difference, in terms of the application of the Equal Protection Clause and of the principles of *Reynolds* v. *Sims*, between the exercise of state power through legislatures and its exercise by elected officials in cities, towns, and counties." At page 482, ". . . In this regard Midland County's Commissioner's Court is representative of most of the general governing bodies of American cities, counties, towns, and villages. . . ." Since school districts or school boards are omitted on every other occasion in the opinion when units of local government are listed, we must assume that the inclusion of school boards in the one instance on page 480 was not deliberate. Furthermore, since school districts are not general governing bodies, we conclude that they are not within the ruling of *Avery*.

It is our view that whether or not the equal representation doctrine applies to a unit of local government depends upon the nature and function of the unit, and that only units of local government having general governmental powers are within the coverage of the equal representation rule. We shall attempt to demonstrate in

Argument No. III that the Junior College District of Metropolitan Kansas City is a special purpose district and not a unit of local government having general governmental powers.

III.

The Junior College District of Metropolitan Kansas City is the unit of local government with a specialized purpose and functions. It is not a unit of local government with general governmental powers. Accordingly, the doctrine of equal representation does not apply to the election of trustees of the junior college district under Section 178.820, RSMo Supp. 1967.

The nature and functions of the junior college district are prescribed by statutes as follows:

After initiation by petition and approval of the State Board of Education the junior college district may be established upon approval of a majority of the voters within the proposed district. At all times the boundaries of the district must be coextensive with the boundaries of the elementary secondary public school districts within the area. These districts are referred to as component school districts of the junior college district. Section 178.770 to 178.790, RSMo Supp. 1967.

The district, once established, is a body corporate and a subdivision of the State of Missouri. Section 178.770.

Six trustees are elected by popular vote to operate the district. The trustees are elected at large or from component school districts based upon relative school enumeration. Section 178.820. The district has authority to levy taxes but levies in excess of the base levy authorized by Section 178.870 require voter approval under Chapter 164, RSMo Supp. 1967.

The district may issue bonds upon approval of the voters. Section 164.121.

The board of trustees of this junior college district have the following powers and functions:

1. To sue and be sued. Section 178.770, subsection 2.

2. To levy and collect taxes. Section 178.770, subsection 2. Section 178.870.

3. To issue bonds after voter authorization. Section 178.770. Section 2.

4. To provide instruction principally at the collegiate level. Section 178.850.

5. To employ teachers and other necessary personnel and to fix their duties and compensation. Section 178.860.

6. To pass upon petitions for annexation. Section 178.890.

7. To acquire property by condemnation. Section 177.041.

8. To hold title to and exercise control over all property of the district and to provide for its maintenance. Sections 177.011 and 177.031.

9. To make rules and govern the school and its pupils. Section 167.161 and Section 171.011.

Parenthetically we note that the appellants at page 10 of their brief have asserted that school districts have the power to maintain their own fire and police protection. If this is intended in the same sense that any home owner may provide for the protection of his home, this is true. However, junior college district does not have any power

to provide general police and fire protection to the community.

The single purpose for existence of the junior college district is to provide education. Although this is an extremely important purpose, nonetheless, it is a very limited purpose. The several powers which we have enumerated above are all merely incident to the district's primary educational purpose.

The principal governmental power of a junior college district is exercised by the voters and the state legislature. Only the electorate can authorize the creation of the district, the levying of taxes in excess of the constitutional base and the issuance of bonds.

A junior college district, as all school districts, does not have inherent powers. These districts have only such powers as are expressly granted by the legislature or as can be necessarily implied from the expressly granted powers. The legislature, at its will, may grant or withhold these powers. *Wright, et al.* v. *Board of Education of St. Louis,* Mo., 246 S.W. 43, 45.

The governmental functions remaining in the hands of the trustees of the junior college district are of an administrative character, namely, the providing for buildings and equipment and the care and maintenance, the providing for the control and government of pupils, employing of necessary personnel and the general day to day business of the educational corporation.

The special purpose and limited powers of a junior college district stand in sharp contrast to the general governmental functions of a municipality. Counties, cities, towns and villages possess quasi sovereignty. Municipal governments include executive, legislative and judicial

departments. They have the power of lawmaker, law enforcer and law interpreter. Municipalities exercise the police power. They license, regulate, prohibit businesses and other matters for the safety, health and welfare of the general public within their boundaries. Municipalities provide common services to all persons within their boundaries such as streets, sewers and other utilities, and fire and police protection. They are in a true sense general governing bodies.

Junior college districts possess none of these general governing powers. In fact, in many ways a public junior college district is more like a private corporate college than it is a governmental unit.

Private corporate colleges have the power to sue and be sued. They may issue bonds. They provide instruction, employ teachers and other personnel, hold title to and exercise control over property and govern the school and its pupils. Perhaps the only significant difference between the powers of a private and a public junior college is the source of revenue. Private institutions, of course, cannot levy taxes. They may, however, benefit from governmental assistance. Since almost every governmental unit has taxing power, we do not believe this is sufficient criteria to warrant application of the equal representation doctrine on this basis alone.

We submit that the Junior College District of Metropolitan Kansas City is a special purpose unit of local government and not a unit with general governmental powers and that under this Court's decisions in *Sailors* and *Avery* the equal representation doctrine does not apply to the election of trustees of the district.

CONCLUSION

Based upon the foregoing arguments, the Attorney General of Missouri submits that the judgment of the Supreme Court of Missouri should be affirmed in all respects for the reason that it correctly applies the principles laid down in *Reynolds, Sailors* and *Avery* to the election of trustees of the Junior College District of Metropolitan Kansas City.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 37

DELLA HADLEY, et al.,

Appellants,

against

THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, *AMICUS CURIAE*, IN SUPPORT OF AFFIRMANCE

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BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, *AMICUS CURIAE*, IN SUPPORT OF AFFIRMANCE

The Attorney General of the State of New York submits this brief in support of the position of the appellees, seeking affirmance of the judgment appealed from.

Statement

The New York Attorney General, by reason of his statewide interest in matters relating to the effective representation of voters in various legislative bodies throughout the State has previously submitted briefs to this

Court, in an *amicus* capacity, with reference to related situations, in *Avery* v. *Midland County*, 390 U. S. 474 (1968) and in *Sailors, et al.* v. *Board of Education of the County of Kent, et al.*, 387 U. S. 105 (1967).

ARGUMENT

The equal representation rule set forth in *Reynolds* v. *Sims*, 377 U. S. 533 (1964), made applicable in *Avery* v. *Midland County*, 390 U. S. 474 (1968), to local legislative bodies with general governmental powers, should not be extended to special purpose governmental units.

We need not repeat what we have argued to this Court in *Avery* (*supra*) and in *Board of Supervisors* v. *Bianchi*, 387 U. S. 97 (1967). Nor we stress the myriad forms which local governmental units may assume. This fact was recognized by Justice White in his *Avery* opinion for the Court's majority (390 U. S., at pp. 480-481).

The New York Attorney General urged in *Sailors*, *Bianchi* and in *Avery* that the "one-person, one-vote" principle should be extended to local governmental units, but that such local subdivisions of state government should be granted some leeway and flexibility in their observance of the principle. The decisions of this Court in the cited cases permit such "leeway" and "experimentation".

We support here the position of the Attorney General of the State of Missouri that the equal representation rule should not be extended, in all cases, to local school districts. We submit that the recent decision in *Kramer* v. *Union Free School District*, 395 U. S. 621 (1969), is not controlling on this appeal. We urge that a valid restriction exists between the situation in *Kramer*, where many classes of citizens were completely deprived of the right

to vote at all and the vote "dilution" situations which are presented under the *Reynolds* principle. Creation of viable special purpose districts may demand the recognition of historical, geographical and boundary considerations, as well as the continued effective functioning of forms of town, village and city government, in the assignment of voting powers to the voters entitled to participate in *special* district elections. The *administrative,* rather than the legislative nature of the functions to be performed by the local special purpose district, is certainly a factor that should also be weighed. *Sailors* v. *Board of Education,* 387 U. S. 105, 110 (1967); *Shanker* v. *Board of Regents,* 27 A D 2d 84 (2nd Dept., 1966), *aff'd* 19 N Y 2d 951 (1967).

The determination in this case is of particular moment to the People of the State of New York because of the variety of its local governmental units which are likely to be affected thereby. In New York City alone, the validity of the voting powers of the individual borough presidents, who represent constituencies with varying populations, but have equal voting power, may be affected by the decision in this case. See *McMillan* v. *Wagner,* 239 F. Supp. 32 (U.S.D.C., So. D. N. Y., 1964). So, too, will the validity of the most recent experiment undertaken to provide a workable solution to the problem of New York City school decentralization, pursuant to which each of the City's boroughs, is granted a single representative on the City's Central Board of Education, in addition to the two members appointable by the Mayor (L. 1969, ch. 330).

No simple power or factor assigned to a local government unit, which does not possess general governmental powers, should be sufficient to bring that unit within the *Reynolds* rule—whether that factor be a budget-making or taxing power or the power to exercise even a specialized type of rule-making or legislative power. The states should be allowed, within the limits of good faith experi-

mentation, to continue to solve their local problems in the manner their general legislative bodies, their State or local legislatures, deem most suitable to and effective for the solution of those problems. *Avery* (*supra*, pp. 485-486).

Legislative bodies with *general legislative powers* (whether state-wide or local) which design subordinate units of government, with specialized functions, which do *not* effectively accomplish the purposes for which these units have been designed, must face their electorates. Those electorates can, when necessary or appropriate, command the revision of the form and powers of *special purpose* districts or units of government (*Avery, supra;* opinion by *Harlan,* J., 390 U. S., at p. 494). This Court need not and should not get bogged down, however, in a morass or "quagmire" (369 U. S., at p. 268) of details as to the manner in which an estimated 80,000 units of local government, many of them special purpose districts, should be constructed. *Avery, supra,* 390 U. S., at pp. 483, 487. This much has been conceded even by exponents of the *Reynolds* rule. See Weinstein, 65 Col. L. Rev. 21, 31-40 (1965). *Avery,* we submit, wisely limited its extension of the *Reynolds* rule to units of local government with general governmental powers (p. 485).

CONCLUSION

The order appealed from should be affirmed.

Dated: New York, New York, October 28, 1969.

Respectfully submitted,

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NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 37.—October Term, 1969

Della Hadley et al., Appellants, *v.* The Junior College District of Metropolitan Kansas City, Missouri, et al.	On Appeal from the Supreme Court of Missouri.

[February 25, 1970]

Mr. Justice Black delivered the opinion of the Court.

This case involves the extent to which the Fourteenth Amendment and the "one man, one vote" principle applies in the election of local governmental officials. Appellants are residents and taxpayers of the Kansas City School District, one of eight separate school districts that have combined to form the Junior College District of Metropolitan Kansas City. Under Missouri law separate school districts may vote by referendum to establish a consolidated junior college district and elect six trustees to conduct and manage the necessary affairs of that district.[1] The state law also provides that these trustees shall be apportioned among the separate school districts on the basis of "school enumeration," defined as the number of persons between the ages of six and 20 years, who reside in each district.[2] In the case of the Kansas City School District this apportionment plan results in the election of three trustees, or 50% of the total number, from that district. Since that district contains approximately 60% of the total school enumeration in the junior college district,[3] appel-

[1] Mo. Ann. Stat. §§ 178.800, 178.820 (1965).

[2] Mo. Ann. Stat. § 167.011 (1965).

[3] For the years 1963 through 1967, the actual enumeration in the Kansas City School District varied between 63.55% and 59.49%. App., at 38.

lants brought suit claiming that their right to vote for trustees was being unconstitutionally diluted in violation of the Equal Protection Clause of the Fourteenth Amendment. The Missouri Supreme Court upheld the trial court's dismissal of the suit, stating that the "one man, one vote" principle was not applicable in this case. 432 S. W. 2d 328. We noted probable jurisdiction of the appeal, 393 U. S. 1115 (1969), and for the reasons set forth below we reverse and hold that the Fourteenth Amendment requires that the trustees of this junior college district be apportioned in a manner which does not deprive any voter of his right to have his own vote given as much weight, as far as is practicable, as that of any other voter in the junior college district.

In *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), we held that the Constitution requires that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Id.*, at 7–8. Because of this requirement we struck down a Georgia statute which had glaring discrepancies among the populations in that State's congressional districts. In *Reynolds* v. *Sims*, 377 U. S. 533 (1964), and the companion cases,[4] we considered state laws which had apportioned state legislatures in a way that again showed glaring discrepancies in the number of people who lived in different legislative districts. In an elaborate opinion we there called attention to prior cases indicating that a qualified voter has a constitutional right to vote in elections without having his vote wrongfully denied, debased or diluted. *Ex parte Siebold*, 100 U. S. 371 (1880); *Ex parte Yarbrough*, 110 U. S. 651 (1884); *United States* v. *Mosley*, 238 U. S. 383 (1915); *Guinn* v. *United States*,

[4] *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633 (1964); *Maryland Committee* v. *Tawes*, 377 U. S. 656 (1964); *Davis* v. *Mann*, 377 U. S. 678 (1964); *Roman* v. *Sincock*, 377 U. S. 695 (1964); *Lucas* v. *Colorado Gen. Assembly*, 377 U. S. 713 (1964).

238 U. S. 347 (1915); *Lane* v. *Wilson*, 307 U. S. 268 (1939); *United States* v. *Classic*, 313 U. S. 299 (1941). Applying the basic principle of *Wesberry*, we therefore held that the various state apportionment schemes denied some voters the right guaranteed by the Fourteenth Amendment to have their votes given the same weight as that of other voters. Finally in *Avery* v. *Midland County*, 390 U. S. 474 (1968), we applied this same principle to the election of Texas county commissioners, holding that a qualified voter in a local election also has a constitutional right to have his vote counted with substantially the same weight as that of any other voter in a case where the elected officials exercised "general governmental powers over the entire geographic area served by the body." *Id.*, at 485.

Appellants in this case argue that the junior college trustees exercised general governmental powers over the entire district and that under *Avery* the State was thus required to apportion the trustees according to population on an equal basis, as far as practicable. Appellants argue that since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college,[5] their powers are equivalent, for apportionment purposes, to those exercised by the county commissioners in *Avery*. We feel that these powers, while not fully as broad as those of the Midland County Commissioners,[6] certainly show that the trustees

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[5] Mo. Ann. Stat. §§ 167.161, 171.011, 177.031, 177.041, 178.770, 178.850–178.890 (1965).

[6] The Midland County Commissioners established and maintained the county jail, appointed numerous county officials, made contracts, built roads and bridges, administered the county welfare system, performed duties in connection with elections, set the

perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here.

This Court has consistently held in a long series of cases,[7] that in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it is practicable, as any other person's. We have applied this principle in congressional elections, state legislative elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constitution against dilution or debasement. While the particular offices involved in these cases have varied, in each case a constant factor is the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions. Thus in the case now before us, while the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in the one crucial factor—these officials are elected by popular vote.

When a court is asked to decide whether a State is required by the Constitution to give each qualified voter the same power in an election open to all, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. If one person's vote is given less weight through

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county tax rate, issued bonds, adopted the county budget, built and ran hospitals, airports, and libraries, fixed school district boundaries, established a housing authority, and determined the election districts for county commissioners. *Avery, supra,* at 476–477.

[7] *Wesberry, supra; Reynolds, supra;* cases cited n. 4, *supra; Avery, supra; Gray* v. *Sanders,* 372 U. S. 368 (1963); *Burns* v. *Richardson,* 384 U. S. 73 (1966); *Swann* v. *Adams,* 385 U. S. 440 (1967).

unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected.

If the purpose of a particular election were to be the determining factor in deciding whether voters are entitled to equal voting power, courts would be faced with the difficult job of distinguishing between various elections. We cannot readily perceive judicially manageable standards to aid in such a task. It might be suggested that equal apportionment is required only in "important" elections, but good judgment and common sense tell us that what might be a vital election to one voter might well be a routine one to another. In some instances the election of a local sheriff may be far more important than the election of a United States Senator. If there is any way of determining the importance of choosing a particular governmental official, we think the decision of the State to select that official by popular vote is a strong enough indication that the choice is an important one. This is so because in our country popular election has traditionally been the method followed when government by the people is most desired.

It has also been urged that we distinguish for apportionment purposes between elections for "legislative" officials and those for "administrative" officers. Such a suggestion would leave courts with an equally unmanageable principle since governmental activities "cannot

easily be classified in the neat categories favored by civics texts," *Avery, supra,* at 482, and it must also be rejected. We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis which will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds, supra,* might not be required, but certainly we see nothing in the present case which indicates that the activities of these trustees fit in that category. Education has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term.

In this particular case the "one man, one vote" principle is to some extent already reflected in the Missouri statute. That act provides that if no one or more of the component school districts has 33⅓% or more of the total enumeration of the junior college district, then all six trustees are elected at large. If, however, one or more districts has between 33⅓% and 50% of the total enumeration, each such district elects two trustees and the rest are elected at large from the remaining districts. Similarly if one district has between 50% and 66⅔% of the enumeration it elects three trustees, and if one

district has more than 66⅔% it elects four trustees.[8] This scheme thus allocates increasingly more trustees to large districts as they represent an increasing proportion of the total enumeration.

Although the statutory scheme reflects to some extent a principle of equal voting power, it does so in a way that does not comport with constitutional requirements. This is so because the act necessarily results in a systematic discrimination against voters in the more populous school districts. This discrimination occurs because whenever a large district's percentage of the total enumeration falls within a certain percentage range it is always allocated the number of trustees corresponding to the bottom of that range. Unless a particular large district has exactly 33⅓%, 50% or 66⅔% of the total enumeration it will always have proportionally fewer trustees than the small districts. As has been pointed out, in the case of the Kansas City School District approximately 60% of the total enumeration entitles that district to only 50% of the trustees. Thus while voters in large school districts may frequently have less effective voting power than residents of small districts, they can never have more. Such built-in discrimination against voters in large districts cannot be sustained as a sufficient compliance with the constitutional mandate that each person's vote count as much as another's, as far as practicable. Consequently Missouri cannot allocate the junior college trustees according to the statutory formula employed in this case.[9] We would be faced with a dif-

[8] Mo. Ann. Stat. § 178.820 (1965).

[9] There is some question in this case whether school enumeration figures, rather than actual population figures, can be used as a basis of apportionment. Cf. *Burns* v. *Richardson*, 384 U. S. 73, 90-95 (1966). There is no need to decide this question at this time since even if school enumeration is a permissible basis, the present statute fails to apportion trustees constitutionally even on that basis.

ferent question if the deviation from equal apportionment presented in this case resulted from a plan that did not contain a built-in bias in favor of small districts, but rather from the inherent mathematical complications in equally apportioning a small number of trustees among a limited number of component districts. We have said before that mathematical exactitude is not required, *Wesberry, supra,* at 18, *Reynolds, supra,* at 577, but a plan that does not automatically discriminate in favor of certain districts is.

In holding that the guarantee of equal voting strength for each voter applies in all elections of governmental officials, we do not feel that the States will be inhibited in finding ways to insure that legitimate political goals of representation are achieved. We have previously upheld against constitutional challenge an election scheme which required that candidates be residents of certain districts which did not contain equal numbers of people. *Dusch* v. *Davis,* 387 U. S. 112 (1967). Since all the officials in that case were elected at large, the right of each voter was given equal treatment.[10] We have also held that where a State chooses to select members of an official body by appointment rather than election, and that choice does not itself offend the Constitution, the fact that each official does not "represent" the same number of people does not deny those people equal protection of the laws. *Sailors* v. *Bd. of Education,* 387 U. S. 105 (1967); cf. *Fortson* v. *Morris,* 385 U. S. 231 (1966). And a State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, "[v]iable local governments may need many innovations, numerous combinations of old

[10] The statute involved in this case provides that trustees who are elected from component districts rather than at large must be residents of the district from which they are elected. Mo. Ann. Stat. § 178.820 (2) (1965).

and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation." *Sailors, supra,* at 110–111. But once a state has decided to use the process of popular election and "once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded." *Gray* v. *Sanders,* 372 U. S. 368, 381 (1963).

For the reasons set forth above the judgment below is reversed and the case is remanded to the Missouri Supreme Court for proceedings not inconsistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 37.—October Term, 1969

Della Hadley et al., Appellants, v. The Junior College District of Metropolitan Kansas City, Missouri, et al.	On Appeal from the Supreme Court of Missouri.

[February 25, 1970]

Mr. Justice Harlan, with whom The Chief Justice and Mr. Justice Stewart join, dissenting.

Today's decision demonstrates, to a degree that no other case has, the pervasiveness of the federal judicial intrusion into state electoral processes that was unleashed by the "one man, one vote" rule of *Reynolds* v. *Sims*, 377 U. S. 533 (1964).

Reynolds established that rule for the apportionment of state legislatures, thereby denying States the right to take into account in the structuring of their legislatures any historical, geographical, economic, or social considerations, or any of the other many practical and subtle factors that have always been recognized as playing a legitimate part in the practice of politics.

Four years later, in *Avery* v. *Midland County*, 390 U. S. 494 (1968), the "one man, one vote" rule was extended to many kinds of local governmental units, thereby affecting to an unknown extent the organizational integrity of some 80,000 such units throughout the country, and constricting the States in the use of the electoral process in the establishment of new ones.

And today, the Court holds the "one man, one vote" rule applicable to the various boards of trustees of Missouri's junior college system, and forebodes, if indeed the case does not decide, that the rule is to be applied to every elective public body, no matter what its nature.

While I deem myself bound by *Reynolds* and *Avery*—despite my continued disagreement with them as constitutional holdings (see my dissenting opinions in *Reynolds*, 377 U. S., at 589, and in *Avery*, 390 U. S., at 486)—I do not think that either of these cases, or any other in this Court, justifies the present decision. I therefore dissent, taking off from *Avery* in what is about to be said.

I

In *Avery* the Court acknowledged that "the states' varied, pragmatic approach in establishing governments" has produced "a staggering number" of local governmental units. The Court noted that, "while special-purpose organizations abound, . . . virtually every American lives within what he and his neighbors regard as a unit of local government with general responsibility and power for local affairs." The Midland County Commissioners Court, the body whose composition was challenged in *Avery*, was found to possess a broad range of powers that made it "representative of most of the general governing bodies of American cities, counties, towns, and villages," and the Court was at pains to limit its holding to such general bodies. 390 U. S., at 482–485. Today the Court discards that limitation, stating that "there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election." *Ante*, at 5. I believe, to the contrary, that the need to preserve flexibility in the design of local governmental units that serve specialized functions, and must meet particular local conditions, furnishes a powerful reason to refuse to extend the *Avery* ruling beyond its original limits. If local units having general governmental powers are to be considered, like state legislatures, as having a substantial identity of function that justifies imposing on them a uniformity of elective structure, it is clear that specialized local entities are characterized

by precisely the opposite of such identity. From irrigation districts to air pollution control agencies to school districts, such units vary in the magnitude of their impact upon various constituencies and in the manner in which the benefits and burdens of their operations interact with other elements of the local political and economic picture. Today's ruling will forbid these agencies from adopting electoral mechanisms that take these variations into account.

In my opinion, this ruling imposes an arbitrary limitation on the ways in which local agencies may be constituted. The Court concedes that the States may use means other than apportionment "to insure that legitimate political goals of representation are achieved." For example, officials elected at large may be required to be residents of particular areas that do not contain equal numbers of people, *Dusch* v. *Davis*, 387 U. S. 112 (1967); the right to vote may be denied outright to persons whose interest in the function performed by the agency is nonexistent or slight, cf. *Kramer* v. *Union Free School District*, 395 U. S. 621 (1969); *Cipriano* v. *City of Houma*, 395 U. S. 701 (1969); or the State may in many instances abandon the elective process altogether and allow members of an official body to be appointed, without any regard for the equal-population principle, *Sailors* v. *Board of Education*, 387 U. S. 105 (1967). Since the Court recognizes the States' need for flexibility in structuring local units, I am unable to see any basis for its selectively denying to them one of the means to achieve such flexibility. If, as the Court speculates, other means will prove as effective as apportionment in the adaptation of local agencies to meet specific needs, presumably those other means will also enable the States just as effectively to accomplish whatever evils the Court thinks it is preventing by today's decision. The Court has not shown that, under the supervision of state legislatures that are

apportioned according to *Reynolds*, flexible methods of apportionment of local official bodies carry any greater danger of abuse than these other means of achieving the desirable goal of specialization. The Court's imposition of this arbitrary limitation on the States can be justified only in the name of mathematical nicety.

I do not believe that, even after *Avery*, such a result is compelled by the absence of "judicially manageable standards" for the "difficult job of distinguishing between various elections." *Ante*, at 5. Before today, the Court's rule was that "one man, one vote" applied only to local bodies having "general governmental powers over the entire geographic area served by the body." 390 U. S., at 485. The Court in *Avery* professed no temerity about concluding that the Midland County Commissioners Court was such a body. The Court's mere recitation of the powers of that entity, *ante*, at 4, n. 6, suffices to establish that conclusion. At the same time, it cannot be argued seriously that the Junior College District of Metropolitan Kansas City is the general governing body for the people of its area. The mere fact that the trustees can, with restrictions, levy taxes, issue bonds, and condemn property for school purposes does not detract from the crucial consideration that the sole purpose for which the district exists is the operation of a junior college. If the Court adhered to the *Avery* line, marginal cases would of course arise in which the courts would face difficulty in determining whether a particular entity exercised general governmental powers, but such a determination would be no different in kind from many other matters of degree upon which courts must continually pass. The importance of ensuring flexibility in the organization of specialized units of government, and the uncertainty whether the rule announced today will further any important countervailing interest, convince me that the Court should not proceed further into the political thicket than it has already gone in *Avery*.

II

The facts of this case afford a clear indication of the extent to which reasonable state objectives are to be sacrificed on the altar of numerical equality. We are not faced with an apportionment scheme that is a historical relic, with no present-day justification, or one that reflects the stranglehold of a particular group that, having once attained power, blindly resists a redistribution. The structure of the Junior College District of Metropolitan Kansas City is based upon a state statute enacted in 1961. Prior to that date, the individual school boards had the power to create their own junior colleges, as they still do, but there was apparently no authorization for cooperation among districts. The 1961 statute was enacted out of concern on the part of the legislature that Missouri's public educational facilities were not expanding at a satisfactory rate, see *Three Rivers Junior College District* v. *Statler*, 421 S. W. 2d 235, 237 (Mo. 1967).[1] The provisions of the statute evidence a legislative determination of the most effective means to encourage expansion through cooperation between districts.

The statutory provision for election of the six-man board of trustees, summarized by the Court, reflects a careful balancing of the desirability of population-based representation against the practical problems involved in the creation of new educational units. The statute does not by its own force create any junior college districts; this is left to the initiative of the residents of particular areas who are interested in providing public junior-college

[1] Counsel for appellees informed the Court at oral argument that prior to the passage of this statute, when the law merely authorized each school district in the State to establish its own junior college, there were only seven such junior colleges, with a total enrollment of approximately 5,000 students. Today there are 12 junior college districts, in which nearly 120 individual school districts participate, with a total enrollment of over 30,000 students.

education for their children. In recognition of the fact that individual school districts may lack the funds or the population to support a junior college of their own, the state legislature has authorized them to make voluntary arrangements with their neighbors for joint formation of a junior college district. If one of the cooperating school districts greatly preponderates in size, it enters into the arrangement knowing that its representation on the board of trustees, while large, will be somewhat smaller than it would be if based strictly on relative school enumeration.

The features of this system are surely sensibly designed to facilitate creation of new educational bodies while guaranteeing to small school districts that they will not be entirely swallowed up by a large partner. The small districts are free to avoid alliance with a highly populated neighbor, if they prefer to link with enough others of their own size to provide a viable base for a junior college. At the same time, a very large school district is probably capable of forming a junior college on its own if it prefers not to consolidate, on the terms set by statute, with smaller neighbors. On the other hand, large and small districts may work together if they find this the most beneficial arrangement.[2] The participation, as here, of seven smaller and one larger school district in the joint formation of a junior college district, represents a pragmatic choice by all concerned from among a number of possible courses of action.

I find it bizarre to conclude that such a voluntary arrangement effects an unconstitutional "dilution" of the votes of residents of the largest school district.

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[2] At the time this suit was filed, nine junior college districts had been formed pursuant to the statutory procedures. Of these, three did not contain a component district large enough to bring into play the fractional formula; the remaining six did contain such a district.

When the Court, in *Reynolds*, rejected a proposed analogy between state legislatures and the Federal Congress, it relied heavily on the fact that state legislative districts "are merely involuntary political units of the State created by statute to aid in the administration of state government." 377 U. S., at 548. In contrast, the National Government was created by the union of "a group of formerly independent States." The system of representation in Congress was "conceived out of compromise and concession" between the larger and smaller States. *Id.*, at 574. The system struck down today shares much of this same character of voluntary compromise. It is true that the analogy would be even closer if the legislature had left the school districts free to negotiate their own apportionment terms, rather than imposing a uniform scale; but as I read the Court's opinion today, it would strike down the apportionment in this case even if the terms had resulted from an entirely free agreement among the eight school districts. Insistence upon a simplistic mathematical formula as the measure of compliance with the Equal Protection Clause in cases involving the electoral process has resulted in this instance in a total disregard of the salutary purposes underlying the statutory scheme.

III

Finally, I find particularly perplexing the portion of the Court's opinion explaining why the apportionment involved in this case does not measure up even under the "one man, one vote" dogma. The Court holds that the voters of the Kansas City School District, who elect 50% of the trustees, are denied equal protection of the laws because that district contains about 60% of the school enumeration. This is so because the statutory formula embodies a "built-in discrimination against voters in large districts." *Ante*, at 7. The Court seems to suggest that the same discrepancy among districts

might pass muster if it could be shown to be mathematically unavoidable in the apportionment of the small number of trustees among the component districts; but the discrepancy is not permissible where it simply reflects the legislature's choice of a means to foster a legitimate state goal. This reasoning seems hard to follow and also disturbing on two scores.

First, to apply the rule with such rigor to local governmental units, especially single-function units, is to disregard the characteristics that distinguish such units from state legislatures. As I noted in my dissent in *Avery*, 390 U. S., at 488–490, there is a much smaller danger of abuses through malapportionment in the case of local units because there exist avenues of political redress that are not similarly available to correct malapportionment of state legislatures. Further, as noted above, the greater diversity of functions performed by local governmental units creates a greater need for flexibility in their structure. If these considerations are inadequate to stave off the extension of the *Reynolds* rule to units of local government, they at least provide a persuasive rationale for applying that rule so as to allow local governments much more play in the joints.

Such an approach is not foreclosed by the previous cases. In *Reynolds*, 377 U. S., at 577–581, the Court catalogued a number of considerations indicating that "somewhat more flexibility" might be permissible in state legislative apportionment than in congressional districting. Compare *Swann* v. *Adams*, 385 U. S. 440 (1967), with *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969), and *Wells* v. *Rockefeller*, 394 U. S. 542 (1969). The need for more flexibility becomes greater as we proceed down the spectrum from the state legislature to the single-purpose local entity.

The disparities of representation in *Avery* were of an entirely different order from those here. In that case,

each of the four districts elected one commissioner to the Comissioners Court, despite the fact that the population of one district was 67,906, while those of the remaining three were 852, 414, and 828. I think that the *Avery* rule, born in an extreme case, is being applied here with a rigidity that finds no justification in the considerations that gave it birth. Cf. *Wells* v. *Rockefeller*, 394 U. S., at 553 (WHITE, J., dissenting). In this case, the disparity of representation is relatively minor. Even more important, it is not an unexplained and unjustified deviation from equality, see *Swann* v. *Adams*, 385 U. S., at 445–446, but reflects an enlightened state policy of encouraging individual school districts to join together voluntarily to expand the State's public junior college facilities.

Second, the Court leaves unexplored the premises underlying its conclusion that the apportionment here does not achieve equality, "as far as practicable." *Ante*, at 7. Missouri is forbidden to use the statutory formula employed in this case because the percentage categories it creates will, in particular instances, only approximate equality, and because whatever discrepancy exists will always favor residents of the smaller districts. The Court does not suggest how a formula could be devised that would provide a general rule for application to all the various junior college districts but would not share these alleged faults. If a large district falling within a given percentage range were allocated the number of trustees corresponding to the top, rather than the bottom, of the range, that would also produce, on the Court's theory, a "built-in discrimination" against voters in *small* districts.

Thus, the result of the Court's holding may be that Missouri is forbidden to establish *any* formula of general application for apportionment of trustees, but must instead provide for the improvisation of an individual

apportionment scheme for each junior college district after the contours of the district have been settled. But surely a State could reasonably determine that the mechanics of operating such a system would be so unduly burdensome that it would be better to apportion according to a statewide formula. Would not such considerations justify a conclusion that the statewide formula achieves equality "as far as practicable"? While the Court does not discuss the problem, its invalidation of this statutory formula seems to be based on the premise that such practical considerations, like a State's desire to encourage cooperation among districts, are constitutionally inadequate to justify any divergence from voting "equality."

The Court does not, however, spell out any rationale for concluding that such matters of administrative convenience deserve no weight in determining what is "practicable." This is especially incongruous in light of the Court's unexplained conclusion that deference can be be given to legislative determinations that the boards should have a small number of trustees and that the trustees in some instances should represent component school districts. Why does the Court not require that the number of trustees be increased from six, in order to reduce the roughness with which equality is approximated? Would a three-man board be unconstitutionally small? Why is the Court willing to accept inequality that derives from a desire to give representation to component school districts, when similar inequality in state legislative districting could probably not be justified by a desire to give representation to counties? Cf. *Reynolds* v. *Sims*, 377 U. S., at 579–581; *Swann* v. *Adams*, 385 U. S., at 444. If equality cannot be achieved when representation is by component districts, why does the "as far as practicable" standard not require at-large election of trustees? Is there something about these

considerations that gives them a status under the Equal Protection Clause that is not possesed by a legislative desire to apportion by a formula of statewide application?

It seems to me that beneath the surface of the Court's opinion lie unspoken answers to these and other similar questions, questions that I can characterize only as matters of political judgment. The Court's adoption of a rigid, mathematical rule turns out not to have saved it from having to balance and judge political considerations, concluding that one does merit some weight in an apportionment scheme while another does not. The fact that the courts, rather than the legislatures, now are the final arbiters of such matters will continue, I fear, after the present decision to be the inevitable consequence of the shallow approach to the Equal Protection Clause represented by the "one man, one vote" theory. The Court could at least lessen the disruptive impact of that approach at the local level by approving this relatively minor divergence from strict equality on the ground that the legislature could reasonably have concluded that it was necessary to accomplish legitimate state interests.

I would affirm the judgment of the Supreme Court of Missouri. What our Court has done today seems to me to run far afield of the values embodied in the scheme of government ordained by the Constitution.

SUPREME COURT OF THE UNITED STATES

No. 37.—October Term, 1969

Della Hadley et al., Appellants, *v.* The Junior College District of Metropolitan Kansas City, Missouri, et al.	On Appeal from the Supreme Court of Missouri.

[February 25, 1970]

Mr. Chief Justice Burger, dissenting.

I concur fully in the opinion of Mr. Justice Harlan. I add this comment to emphasize the subjective quality of a doctrine of constitutional law which has as its primary standard "a general rule, [that] whenever a state or local government decides to select persons by popular election . . . ," the Constitution commands that each qualified voter must be given a vote which is equally weighted with the votes cast by all other electors.

The failure to provide guidelines for determining when the Court's "general rule" is to be applied is exacerbated when the Court implies that the stringent standards of "mathematical exactitude" which are controlling in apportionment of federal congressional districts need not be applied to smaller specialized districts such as the junior college district in this case. This gives added relevance to Mr. Justice Harlan's observation that "[t]he need for more flexibility becomes greater as we proceed down the spectrum from the state legislature to the single-purpose local entity." *Ante*, at —. Yet the Court has given almost no indication of which non-population interests may or may not legitimately be considered by a legislature in devising a constitutional apportionment scheme for a local, specialized unit of government.

Ultimately, only this Court can finally apply these "general rules" but in the interim all other judges must speculate as best they can when and how to apply them: with all deference I suggest the Court's opinion today fails to give any meaningful guidelines.